

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





77-70413

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Original

-----X  
HECTOR CRUZ, MATTHEW GULLEY and :  
CARMINE PERELLI, individually and :  
on behalf of all other persons :  
similarly situated, :

Plaintiffs-Appellees, :

GEORGE DUNLEAVY, LOUIS POVEROMO, :  
NICHOLAS PECHAR and GEORGE MITCHELL, :

\* Intervenor-Plaintiffs-Appellees, :

-against- :

BENJAMIN WARD, individually and in :  
his capacity as Commissioner of the :  
New York State Department of :  
Correctional Services, VITO M. :  
TERNULLO, individually and in his :  
capacity as Director of Matteawan :  
State Hospital, and LAWRENCE SWEENEY, :  
individually and in his capacity as :  
Chief of Psychiatric Services at :  
Matteawan State Hospital, :

Defendants-Appellants.  
-----X

APPENDIX

MONROE COUNTY LEGAL  
ASSISTANCE CORP.  
MID-HUDSON VALLEY LEGAL  
SERVICES PROJECT  
Attorneys for Plaintiffs-  
Appellees

50 Market ~~34 South~~ Street  
Poughkeepsie ~~Middletown~~, New York 12601  
12-601

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Defendants-  
Appellants  
Office and P.O. Address  
Two World Trade Center  
New York, New York 10047  
Tel. No. (212) 488-7657



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| DIST/OFFICE | YR. | NUMBER | MO. | DAY | YEAR | IVS | U   | R | 23 | S | OTHER | NUMBER          | DEM. | YR. | NUMBER |
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| 208-1       | 75  | 5334   | 10  | 28  | 75   | 3   | 440 | 1 |    |   | 500   | <del>0000</del> |      | 75  | 5334   |

PLAINTIFFS

**JUDGE GOETTEL**

DEFENDANTS

~~Bonsal, J.~~

CRUZ, HECTOR  
GULLEY, MATTHEW  
PERELLI, CARMINE individually  
and on behalf of all other  
persons similarly situated.

15-75 GEORGE DUNLEAVY,  
LOUIS POVEROMO  
NICHOLAS PECHAR AND  
GEORGE MITCHELL

11/13

WARD, BENJAMIN individually  
and in his capacity as  
Commissioner of the New  
York State Department of  
Correctional Services  
TERNULLO, VITO M. individually  
and in his capacity as  
Director of Matteawan State  
Hospital  
SWEENEY, LAWRENCE individually  
and in his capacity as Chief  
of Psychiatric Services at  
Matteawan State Hospital.

CAUSE

28 U.S.C. § 1343(3), (4); 42 U.S.C. § 1983; 28 U.S.C. 1331 Declaratory  
& inju relief & damages-viol. of civil rights. rg

ATTORNEYS

Mid-Hudson Valley Legal Services  
Project (Monroe County Legal  
Assistance Corporation)  
50 Market Street  
Poughkeepsie, New York - 12601  
tele: (914) 452-7911

Louis J. Lefkowitz  
Atty. General - State of NY.  
2 World Trade Center, NYC 10047

BEST COPY AVAILABLE

①

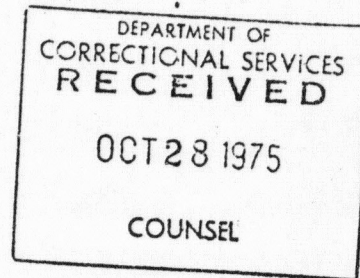
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|                                                               | DATE             | RECEIPT NUMBER | C.D. NUMBER       | CARD DATE MAILED |
|                                                               | OCT 28 1975      | 111            |                   | JS-5             |
|                                                               |                  |                |                   | JS-6             |



| FILE     | NR.  | PROCEEDINGS                                                                                                                                                                                                                                                                                                                           |
|----------|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1-28-75  | (1)  | Filed complaint and issued summons.                                                                                                                                                                                                                                                                                                   |
| 1-28-75  | (2)  | Filed ORDER that the pltffs. are authorized to proceed with this action in forma pauperis without being required to pay fees and costs or give security therefor. Pierce, J.                                                                                                                                                          |
| 1-28-75  | (3)  | Filed Order that Eric Gross, Kevin Brown & Mary A. Hanlon are hereby appointed to serve the summons & complaint. Clerk.                                                                                                                                                                                                               |
| 1-11-75  | (4)  | Filed pltff's affidavit & show cause order granting preliminary injunction ret. before Bonsal, J.                                                                                                                                                                                                                                     |
| 1-11-75  | (5)  | Filed pltff's memorandum of law in support of motion for preliminary injunction.                                                                                                                                                                                                                                                      |
| 1-11-75  | (6)  | Filed affidavit of Dr. L. Sweeney in opposition to pltff's application for preliminary injunction.                                                                                                                                                                                                                                    |
| 1-11-75  | (7)  | Filed deft's memorandum of law in opposition to pltff's application.                                                                                                                                                                                                                                                                  |
| 1-14-75  | (8)  | Filed pltff's supplemental memorandum of law in support of motion for a preliminary injunction.                                                                                                                                                                                                                                       |
| 1-28-75  | (9)  | Filed Memo End. on document #4. Application for preliminary injunction is respectfully referred to Magistrate Goettel for purpose of holding an evidentiary hearing at Mattewan State Hospital, Beacon, NY and to report his findings and recommendations to this Court. So Ordered. Bonsal, J. (mn)                                  |
| 2-03-75  | (10) | Filed pltff's affidavit & notice of motion to intervene Geo. Dunleavy, et al. as named pty. pltff's. ret. 12-15-75.                                                                                                                                                                                                                   |
| 2-01-75  |      | PRE-TRIAL CONFERENCE HELD BY <i>Bonsal, J.</i>                                                                                                                                                                                                                                                                                        |
| 2-15-75  |      | Filed Memo-Endorsed on pltff's motion #10 Filed 12-03-75, intervene pty. pltff's. Motion granted. No opposition. So ordered. Bonsal, J. m                                                                                                                                                                                             |
| 2-30-76  | 11   | Filed pltffs.'s request for production and copying of documents to defts.                                                                                                                                                                                                                                                             |
| 2-30-76  | 12   | Filed pltffs.' interrogs. to defts.                                                                                                                                                                                                                                                                                                   |
| 2-09-76  |      | PRE-TRIAL CONFERENCE HELD BEFORE MAGISTRATE GOETTEL.                                                                                                                                                                                                                                                                                  |
| 2-21-76  | 13   | Filed Notice of reassignment to Judge Goettel                                                                                                                                                                                                                                                                                         |
| 2-23-76  | 15   | Filed pltffs post-hearing memorandum in support of motion for preliminary injunction and motion to proceed as a class.                                                                                                                                                                                                                |
| 2-20-76  | 16   | Filed OPINION # 45450 Pltffs. Cruz, Gulley and Perrelli, commenced to enjoin deft. officials in re to transferring. Withing sixty days, the defts shall submit to this Court written guidelines providing all feasible and appropriate procedural safeguards as mandated by the Due Process Clause and this decision--Goettel, J. n/n |
| 12-12-77 | 17   | Filed defts affdvt. and notice of motion to stay order of the Court dtd. 12-17-77 -- ret. (on submission)                                                                                                                                                                                                                             |
| 12-13-77 | 18   | Filed defts notice of appeal to the USCA for the 2nd Circuit from order dtd. 12-17-76 -- copy mailed.                                                                                                                                                                                                                                 |



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



HECTOR CRUZ, MATTHEW GULLEY, CARMINE  
PERRELLI, individually and on behalf  
of all other persons similarly situated,

Plaintiffs,

-against-

BENJAMIN WARD, individually and in his  
capacity as Commissioner of the New York  
State Department of Correctional Services;  
VITO M. TERNULLO, individually and in his  
capacity as Director of Matteawan State  
Hospital; LAWRENCE SWEENEY, individually  
and in his capacity as Chief of Psychiatric  
Services at Matteawan State Hospital,

Defendants.

ORDER TO SHOW CAUSE  
WITH TEMPORARY  
RESTRAINING ORDER

75 CIV. 5334 ~~100-1~~  
D.B.B.

Upon the Complaint of the plaintiffs, sworn to October 27 ,  
1975, the affidavit of plaintiff Cruz, sworn to on October 27 , 1975, the  
affidavit of plaintiff Gulley, sworn to on October 27 , 1975 and the affi-  
davits of Jane E. Bloom, Esq., <sup>and Michael Kolb</sup> sworn to on October 21 , 1975 IT IS HEREBY  
ORDERED THAT the defendants show cause before this Court at the United  
States Courthouse, Foley Square, Room 2804 , New York, New York, on  
✓ November 3 , 1975 at 9:30 a.m. , why an order should not be en-  
✓ tered granting plaintiffs herein the following relief:

1. ~~A temporary restraining order and a~~<sup>A</sup> preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure ordering defendants to:

a. Release plaintiffs Hector Cruz and Matthew Gulley from their present confinement on the Transfer Unit at Fishkill or their possible confinement in prison and return them to the general population at Matteawan where they were housed prior to October 17, 1975, and

b. Restore to plaintiffs Hector Cruz and Matthew Gulley their right to participate in all existing institutional programs at Matteawan.

2. ~~A temporary restraining order and a~~<sup>A</sup> preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure restraining defendants, their agents, employees and all those acting in concert with them from transferring plaintiff Perrelli or the class he represents without their consent from Matteawan to prison as a punitive measure without a prior hearing in violation of the Fourteenth Amendment to the United States Constitution.

3. An order pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure determining that this action may properly proceed as a class action pursuant to Rule 23(a), (b) 2 because the class consisting of all persons at Matteawan subject to or subjected to punitive transfers to prison without their consent is so numerous that joinder of all members



is impracticable; there are questions of law and fact common to the class; the claims of the representatives are typical of the claims of the class; the representatives will fairly and adequately protect the interests of the class; and the parties opposing the class have acted on grounds generally applicable to the class, making appropriate final injunctive and declaratory relief with respect to the class as a whole.

Plaintiffs Cruz and Gulley, mentally ill persons in need of treatment, seek this relief for themselves and all others similarly situated on the grounds that:

1. On October 21, 1975, they were transferred from Matteawan to the Transfer Unit at Fishkill to be transferred back to prison. They are in imminent danger of being transferred to prison. They will suffer irreparable injury if they are returned to prison. In prison, they will be deprived of their medication, <sup>and</sup> placed in locked cells, even though they suffer from claustrophobia and hallucinate and hear voices when placed in a locked room.

2. The issuance of a temporary restraining order will not cause undue inconvenience or loss to the defendants but will prevent irreparable injury to plaintiffs Cruz and Gulley and others similarly situated.

3. Plaintiffs Cruz and Gulley have no adequate remedy at law as set forth more fully in the verified complaint and affidavits of plaintiffs Cruz and Gulley.

4. No prior application for similar relief has been made.

~~IT IS HEREBY ORDERED, that it appearing to the Court that~~  
 defendants will cause irreparable injury, damage and loss to plaintiffs  
 Cruz and Gulley unless they are restrained from holding plaintiffs Cruz  
 and Gulley in the Transfer Unit at Fishkill and transferring plaintiffs  
 Cruz and Gulley to prison <sup>and notice having been given to the</sup> ~~before~~ adverse parties and their attorneys ~~can~~  
~~be heard in opposition,~~ defendants, their subordinates, agents and attor-  
<sup>temporarily</sup> neys, be and hereby are RESTRAINED from holding plaintiffs Cruz and Gulley  
 in the Transfer Unit at Fishkill and transferring plaintiffs Cruz and  
 Gulley to prison and are ORDERED to return plaintiffs Cruz and Gulley to  
 the general population at Matteawan pending a final hearing and determina-  
 tion of their motion for a preliminary injunction, and it is further

~~ORDERED, that the security requirements of Rule 65 of the~~  
~~Federal Rules of Civil Procedure be waived,~~ and it is further

ORDERED, that this ORDER TO SHOW CAUSE, together with papers  
 upon which it is granted be served personally upon the defendants or their  
 ✓ attorneys on or before the 28<sup>th</sup> day of October , 1975 by 5 p.m.

✓ DATED: New York, New York  
 October 28 , 1975

ISSUED AT  
 12:10 - .m.

s/ Dudley B. Borsal  
 UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

HECTOR CRUZ, et al.,

Plaintiffs,

-against-

AFFIDAVIT

BENJAMIN WARD, et al.,

Defendants.

---

STATE OF NEW YORK )  
COUNTY OF DUTCHESS ) ss.:

HECTOR CRUZ, being duly sworn, deposes and says:

1. I am a plaintiff in this action and submit this affidavit in support of a motion for a temporary restraining order and preliminary injunction.

2. I am a citizen of the United States and am currently incarcerated at the Transfer Unit at Fishkill Correctional Facility.

3. I am a mentally ill person in need of treatment. When placed in a locked cell, I hallucinate and hear voices and become very depressed and nervous. At Matteawan, I was given medication, placed in an open ward, and occasionally seen by a doctor.

4. On October 17, 1975, one of the inmates on Ward 6 became agitated after he was notified he was being transferred to prison. When I and other inmates attempted to restrain him, a fight ensued involving numerous inmates and correctional officers.

5. From October 17, 1975 to October 21, 1975, I was placed in the jail ward at Matteawan. On October 20, 1975, I was seen by five doctors for about one minute. They questioned me about the October 17, 1975 incident.

6. On October 21, 1975, I was transferred to the Transfer Unit at Fishkill and placed in a locked cell for 9 hours a day without a prior hearing. I experience hallucinations when locked in the closed cell. I have been informed that I will be transferred to prison any day.

7. When I was sent from Matteawan to prison on one prior occasion, I hallucinated in the closed cell and I became very ill. After two weeks I was transferred back to Matteawan.

8. If I remain at the Transfer Unit or am transferred to prison, I will suffer severe harm. I request that I be returned to the general population at Matteawan.

9. No prior applications for similar relief have been made.

Hector Cruz  
HECTOR CRUZ

Sworn to before me this

27 day of October, 1975

Jane Ellen Bloom

JANE ELLEN BLOOM  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN DUTCHESS COUNTY

COMMISSION EXPIRES MARCH 30, 1976

⑧



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

HECTOR CRUZ, et al.,

Plaintiffs,

-against-

AFFIDAVIT

BENJAMIN WARD, et al.,

Defendants.

---

STATE OF NEW YORK )  
COUNTY OF DUTCHESS ) ss.:

MATTHEW GULLEY, being duly sworn, deposes and says:

1. I am a plaintiff in this action and submit this affidavit in support of a motion for a temporary restraining order and preliminary injunction.

2. I am a citizen of the United States and am currently incarcerated at the Transfer Unit at Fishkill Correctional Facility.

3. I am a mentally ill person in need of treatment. When placed in a locked cell, I hallucinate and hear voices and become very depressed and nervous. At Matteawan, I was given medication, placed in an open ward, and occasionally seen by a doctor.

4. On October 17, 1975, one of the inmates on Ward 6 became agitated after he was notified he was being transferred to prison. When I and other inmates attempted to restrain him, a fight ensued involving numerous inmates and correctional officers.

5. On October 17, 1975, I was placed in the jail ward at Matteawan and then placed in the hospital ward. At the hospital ward, I was placed in a restraining sheet and given an injection that caused me to sleep on and off for about three days.

6. On October 20, 1975, I was seen by five doctors for about three minutes. One doctor asked me what day and year it was and when I stated it was 1965, he stated I was faking.

7. On October 21, 1975, I was transferred to the Transfer Unit at Fishkill and placed in a locked cell for 9 hours a day without a prior hearing. I experience hallucinations when locked in the closed cell. I have been informed that I will be transferred to prison any day.

8. When I was sent from Matteawan to prison on one prior occasion, I hallucinated in the closed cell and I became very ill. After two weeks I was transferred back to Matteawan.

9. If I remain at the Transfer Unit or am transferred to prison, I will suffer severe harm. I request that I be returned to the general population at Matteawan.

10. No prior applications for similar relief have been made.

Matthew Gulley  
MATTHEW GULLEY

Sworn to before me

this 27 day of October, 1975

Jane Ellen Bloom  
JANE ELLEN BLOOM  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN DUTCHES COUNTY



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

HECTOR CRUZ, et al.,

Plaintiffs,

-against-

AFFIDAVIT

BENJAMIN WARD, et al.,

Defendants.

---

STATE OF NEW YORK     )  
COUNTY OF DUTCHESS    ) ss.:

JANE E. BLOOM, being duly sworn, deposes and says:

1. I am a Staff Attorney at the Poughkeepsie office of the MID-HUDSON VALLEY LEGAL SERVICES PROJECT, 50 Market Street, Poughkeepsie, New York.

2. I submit this affidavit in support of plaintiffs' motion for a temporary restraining order, preliminary injunction, and a determination that this action may proceed as a class action.

3. The plaintiffs are mentally ill persons who are currently subject to or have been subjected to punitive transfers from Matteawan to prison. They seek individually and on behalf of the class they represent declaratory and injunctive relief against the punitive transfer of inmates from Matteawan to prison without their consent in violation of the due process clause of the Fourteenth Amendment to the United States Constitution and New York Correction Law §410.

4. In addition, plaintiffs seek damages for the physical and psychological harm they have suffered as a result of defendants' violation of their rights.

5. A temporary restraining order is sought on behalf of plaintiffs Cruz and Gulley because they are in imminent danger of being transferred to prison. They will suffer irreparable injury if they are returned to prison. In prison, they will be deprived of their medication and placed in locked cells even though they suffer from claustrophobia and hallucinate and hear voices when placed in a locked room.

6. There has been no previous application for the relief requested herein.

7. There is no adequate remedy at law.

RULE 23 (a)

8. With respect to plaintiffs; request to maintain this action as a class action, there are four prerequisites for class relief pursuant to Rule 23(a), which are:

"(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class."

All of these prerequisites are met in this action.



RULE 23(a)(1) - IMPRACTICABILITY OF JOINDER

9. In the past twelve months, there have been approximately 60 mentally ill persons who have been subjected to punitive transfers from Matteawan to prison. There are over 300 inmates currently incarcerated at Matteawan who are subject to such practices.

10. Due to the nature of the relief sought, it will benefit not only the plaintiffs and other mentally ill persons who have or are now subject to punitive transfers to prison against their consent, but also all those who may face such procedures in the future.

RULE 23(a)(2) - COMMON ISSUES

11. The common question applicable to all the members of the class is whether the punitive transfer of mentally ill persons without their consent violates their rights under the due process clause of the Fourteenth Amendment to the United States Constitution as well as Correction Law §410.

RULE 23(a)(3) - TYPICALITY

12. While the facts in any transfer from Matteawan to prison are unique, there is a common claim typical of the entire class that the punitive transfer of mentally ill persons without their consent violates their rights under the due process clause of the Fourteenth Amendment to the United States Constitution as well as Correction Law §410.

13. There is no conflict between the relief sought by the plaintiffs and the interests of the other members of the class. Plaintiffs seek to secure their right to remain at Matteawan without their consent, to secure treatment and to secure the right to a due process hearing prior to a punitive transfer to prison. The members of the class cannot be hurt by having this right established.

RULE 23(a)(4) - ADEQUACY OF REPRESENTATION

14. The plaintiffs clearly have a stake in this proceeding which makes their representation adequate. Plaintiff Perrelli has already suffered physical and mental injury as a result of his punitive transfer from Matteawan to prison. Plaintiffs Cruz and Gulley are in imminent danger of being transferred to prison.

15. The plaintiffs are represented by attorneys employed by Legal Services programs funded by the Office of Economic Opportunity. Your deponent is a member of the Bar of this Court and has had experience in class action litigation, Vail, et al., v. Quinlan, et al., 74 Civ. 4773 (three judge court); Braxton et al., v. Poughkeepsie Housing Authority, 73 Civ. 4077 (CMM).

RULE 23(b)(2)

16. If an action meets the prerequisites of Rule 23(a), it may be maintained as a class action if it further meets the requirements of one more of the provisions of Rule 23(b). This action meets the requirements



of 23(b)(2), which provides for maintenance of a class action where

"the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole..."

17. The parties opposing the class, the defendants, have engaged in punitive transfers of inmates to prison in violation of plaintiffs' constitutional and statutory rights. The defendants have acted and are acting in the same way as to all persons at Matteawan. As a result, declaratory and injunctive relief as requested by the plaintiffs is appropriate.

WHEREFORE, your deponent prays that this Court enter the following:

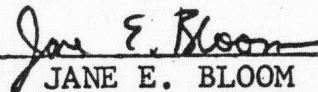
1. A temporary restraining order and a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure ordering defendants to:

a. Release plaintiffs Hector Cruz and Matthew Gulley from their present confinement on the Transfer Unit at Fishkill or their possible confinement in prison and return them to the general population at Matteawan where they were housed prior to October 17, 1975, and

b. Restore to plaintiffs Hector Cruz and Matthew Gulley their right to participate in all existing institutional programs at Matteawan.

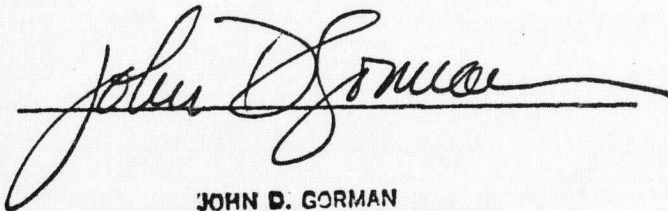
2. A temporary restraining order and a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure restraining defendants, their agents, employees and all those acting in concert with them from transferring plaintiff Perrelli or the class he represents without their consent from Matteawan to prison as a punitive measure without a prior hearing in violation of the Fourteenth Amendment to the United States Constitution.

3. An order determining that this action be maintained as a class action under Rule 23(b)(2) as requested in the complaint.

  
JANE E. BLOOM

Sworn to before me this

26 day of *October*, 1975



JOHN D. GORMAN  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ~~EMC~~ COUNTY *ALSTER*  
COMMISSION EXPIRES MARCH 30, 1976



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

HECTOR CRUZ, et al.,

Plaintiffs,

-against-

AFFIDAVIT

BENJAMIN WARD, et al.,

Defendants.

---

JANE E. BLOOM, being duly sworn, says:

1. I am the attorney of record in this proceeding and in connection with plaintiffs' application for a temporary restraining order, I personally notified defendants Sweeney; defendant Ternullo's assistant Mr. Breen (Mr. Ternullo was on vacation); defendant Ward's secretary Jean Bosco (Mr. Ward was not available at his office and Commissioners assisting Mr. Ward instructed Jean Bosco to take a message); Mr. Scher, an assistant Attorney General; and Mr. Joel Lewittes, an assistant Attorney General, by telephone of this action and plaintiffs intention to present an Order to Show Cause to this Court seeking a temporary restraining order.

2. In my conversation with the respective parties and their attorneys, I described the action and the relief sought and the nature of the temporary restraining order. I further informed them that the summons and complaint would be filed with the clerk

of this Court at about 10:00 a.m. on October 28, 1975 at the United States Federal Courthouse at Foley Square, New York, New York, and that shortly thereafter I would be presenting the Order to Show Cause and supporting papers to the Judge assigned to the case.

S/  
Jane E. Bloom

Sworn to and subscribed before  
me this 27 day of October 1975.

S/  
JURAT



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

HECTOR CRUZ, et al.,

Plaintiffs,

-against-

AFFIDAVIT

BENJAMIN WARD, et al.,

Defendants.

---

MICHAEL KOLB, being sworn, deposes and says:

1. I am a law graduate employed by the MID-HUDSON VALLEY LEGAL SERVICES PROJECT with offices at 50 Market Street, Poughkeepsie, New York.

2. At about 11:45A.M. on October 27, 1975, I telephoned the office of Classification and Movement in the New York Department of Correctional Services, Albany, New York. I asked an employee in that office whether she could inform me whether plaintiffs Cruz and Gulley were scheduled for transfer from the Transfer Unit at Fishskill back to prison. The employee told me that plaintiff Gulley is scheduled to be transferred to Auburn Correctional Facility and that plaintiff Cruz is scheduled for transfer to Attica Correctional Facility. I was told that the transfer would occur within a week or so.

Michael Kolb  
MICHAEL KOLB

Sworn to before me this

27th day of October 1975

S/ \_\_\_\_\_

JANE ELLEN BLOOM  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN DUTCHESS COUNTY  
COMMISSION EXPIRES MARCH 30, 1976



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

HECTOR CRUZ, MATTHEW GULLEY, CARMINE  
PERRELLI, individually and on behalf  
of all other persons similarly situated,

Plaintiffs,

-against-

BENJAMIN WARD, individually and in his  
capacity as Commissioner of the New York  
State Department of Correctional Services;  
VITO M. TERNULLO, individually and in his  
capacity as Director of Matteawan State  
Hospital; LAWRENCE SWEENEY, individually  
and in his capacity as Chief of Psychiatric  
Services at Matteawan State Hospital,

Defendants.

---

JUDGE BONJAL  
SUMMONS

75 CIV. 5334

To the above named defendants.

You are hereby summoned and required to serve upon

MID-HUDSON VALLEY LEGAL SERVICES PROJECT  
(Monroe County Legal Assistance Corp.)  
by Jane E. Bloom, Esq.,

plaintiffs' attorney, whose address is

50 Market Street  
Poughkeepsie, New York  
Telephone (914) 452-7911

an answer to the complaint which is herewith served upon you, within  
20 days after service of this summons upon you, exclusive of the day  
of service. If you fail to do so, judgment by default will be taken against  
you for the relief demanded in the complaint.

s/ Raymond F. Buehardt  
CLERK OF COURT

s/ D. Harrison  
DEPUTY CLERK

DATED: OCT. 28, 1975



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

HECTOR CRUZ, MATTHEW GULLEY, CARMINE  
PERRELLI, individually and on behalf  
of all other persons similarly situated,

Plaintiffs,

-against-

COMPLAINT  
CLASS ACTION

75 CIV.

BENJAMIN WARD, individually and in his  
capacity as Commissioner of the New York  
State Department of Correctional Services;  
VITO M. TERNULLO, individually and in his  
capacity as Director of Matteawan State  
Hospital; LAWRENCE SWEENEY, individually  
and in his capacity as Chief of Psychiatric  
Services at Matteawan State Hospital,

Defendants.

---

I. PRELIMINARY STATEMENT

1. This is a class action for declaratory and injunctive relief and money damages. Plaintiffs, individually and on behalf of all persons incarcerated at Matteawan State Hospital (hereinafter referred to as Matteawan), seek to have this Court declare invalid and enjoin defendants' practice of transferring mentally ill inmates from Matteawan to prison as a punitive measure. Plaintiffs maintain that such transfers violate the due process clause of the Fourteenth Amendment of the Constitution of the United States as well as New York Correction Law §410.

## II. JURISDICTION

2. Jurisdiction is conferred on this Court by 28 U.S.C. Section 1343 (3), (4) which provides for original jurisdiction of this Court in all suits authorized by 42 U.S.C. Section 1983 to redress the deprivation under color of state law of any right, privilege, or immunity secured by the Constitution of the United States or by an Act of Congress providing for equal rights or civil rights of all persons within the jurisdiction of the United States and 28 U.S.C. 1331 as the matter in controversy exceeds \$10,000 and arises under the Constitution of the United States.

3. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. Section 2201, 2202, and Rule 57 of the Federal Rules of Civil Procedure.

## III. PLAINTIFFS

4. Plaintiff Hector Cruz, a citizen of the United States and the State of New York, is presently an inmate of the Transfer Unit at Fishkill Correctional Facility, (hereinafter Fishkill), serving a sentence of imprisonment imposed by a New York State Court. He was transferred from Matteawan to the Transfer Unit at Fishkill on October 21, 1975.

5. Plaintiff Matthew Gulley, a citizen of the United States and the State of New York, is presently an inmate of the Transfer Unit at Fishkill serving a sentence of imprisonment imposed by a New York State Court. He was transferred from Matteawan to the Transfer Unit at Fishkill on October 21, 1975.



6. Plaintiff Carmine Perrelli, a citizen of the United States and the State of New York, is presently an inmate at Matteawan serving a sentence of imprisonment imposed by a New York State Court.

#### IV. CLASS ACTION

7. Plaintiffs Cruz, Gulley, and Perrelli bring this action on their own behalf and pursuant to Rule 23(a),(b)(2) of the Federal Rules of Civil Procedure, on behalf of all persons incarcerated at Matteawan.

8. The class of plaintiffs set forth in paragraph 7 is so numerous that joinder of all the members is impractical. Over 300 individuals are currently incarcerated at Matteawan. There are questions of law and fact common to the class, namely, the punitive transfer of mentally ill inmates from Matteawan to prison in violation of their rights under the due process clause of the Fourteenth Amendment of the Constitution of the United States as well as New York Correction Law §410. The named plaintiffs will fairly and adequately protect the interests of the class. In subjecting plaintiffs to punitive transfers in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States, the defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

V. DEFENDANTS

9. Defendant Benjamin Ward is the Commissioner of the New York State Department of Correctional Services. He is responsible for the maintenance, operation, and administration of all New York State Correctional institutions including Matteawan pursuant to New York Correction Law §5, 112, and 400.

10. Defendant Vito M. Ternullo is the Director of Matteawan. As the Director, defendant Ternullo has control of the direction and management of Matteawan subject only to the rules promulgated by and statutory powers vested in defendant Ward. As the chief executive officer, defendant Ternullo has the duty to "maintain salutary discipline among all who are employed by the institution, and enforce strict compliance with all instructions and orders given by him, and uniform obedience to all the rules and regulations of the hospital". New York Correction Law §405.

11. Defendant Lawrence Sweeny, is the Chief of Psychiatric Services at Matteawan. As such, he is responsible for the care of mentally ill inmates at Matteawan.

12. Defendants are officers, agents and employees of the State of New York.



13. At all times relevant hereto defendants have acted under color of the laws of the State of New York.

#### VI. FACTS

14. Matteawan, located at Beacon in Dutchess County, New York, houses "mentally ill persons" in the custody of the department of corrections. Its population consists of persons convicted and sentenced pursuant to the New York State Penal Law. New York Correction Law §400.

15. Upon information and belief, Matteawan's present inmate population is approximately 310.

16. The general population of Matteawan is housed in large open wards arranged in a dormitory style. Inmates are permitted to have visitors every day. Inmates are provided with required medication each day. Conditions at the other state prisons are more severe and restrictive than Matteawan. At prison, inmates live in barred cages with doors that can only be opened by guards. <sup>At prison,</sup> Inmates are generally permitted to have only about 4 visits per month.

#### A. PLAINTIFF CRUZ

17. In 1961, plaintiff Cruz was found guilty by verdict of the crime of first degree murder and was sentenced to death.

18. In 1961, plaintiff Cruz's sentence of imprisonment commenced when he was incarcerated at Ossining Correctional Facility.

19. In 1962, plaintiff Cruz's sentence to death was commuted and he was transferred to Attica Correctional Facility (hereinafter Attica) where he remained until 1973.

20. In 1973, plaintiff Cruz was placed in segregation at Attica for three months. During this time he became depressed and attempted to commit suicide by hanging himself. He also suffered from claustrophobia and began to hallucinate in his cell and hear voices. On or about November, 1973, plaintiff Cruz was determined to be a mentally ill person in need of treatment pursuant to New York Correction Law §408 and was transferred from Attica to the Diagnostic and Evaluation Unit at Matteawan (hereinafter D & E). On or about December, 1973, plaintiff Cruz was transferred from the Diagnostic & Evaluation Unit at Matteawan to the general population at Matteawan.

21. At Matteawan, plaintiff Cruz received medication and was occasionally seen by a doctor. He was housed in an open ward rather than in a closed cell.

22. On or about November, 1974, plaintiff Cruz requested a transfer to Clinton Correctional Facility (hereinafter Clinton) because he had been subjected to repeated beatings by guards at Matteawan and plaintiff Cruz was transferred to Clinton.

23. At Clinton, plaintiff Cruz was placed in a closed cell and has given no medication. Plaintiff Cruz became very depressed and began to hallucinate.



24. Plaintiff Cruz remained at Clinton for about two weeks when he was determined to be a mentally ill person in need of treatment pursuant to New York Correction Law § 408 and has transferred to D & E at Matteawan. On or about February, 1975, plaintiff Cruz was transferred to the general population at Matteawan. At D & E and the general population at Matteawan, plaintiff Cruz was given medication, placed in an open ward, and was occasionally seen by a doctor.

25. On October 17, 1975, one of the inmates on Ward 6 became agitated after he was notified he was being transferred to prison. When plaintiff Cruz and other inmates attempted to hold the inmate, a fight ensued involving numerous inmates and correctional officers.

26. On October 17, 1975, plaintiff Cruz was placed in the jail ward at Matteawan and remained there until October 21, 1975. Plaintiff Cruz received medication while he was confined to the jail ward.

27. On October 20, 1975, plaintiff Cruz was seen by five doctors for approximately one minute. He was questioned regarding the October 17, 1975 incident. No questions were asked regarding his mental condition.

28. On October 21, 1975, plaintiff Cruz was transferred from the jail ward at Matteawan to the Transfer Unit at Fishkill Correctional Facility. From October 21, 1975 to October 23, 1975 he was locked

in a closed cell for 9 hours a day. He currently experiences hallucinations when he is locked in the closed cell. Plaintiff Cruz has been informed that he will be returned to prison.

29. Plaintiff Cruz was at no time afforded a due process hearing or any opportunity to inquire into the circumstances of the transfer.

30. The transfer of plaintiff Cruz was motivated by defendants' desire to punish him for the October 17, 1975 incident at Matteawan.

31. Plaintiff Cruz is currently mentally ill and has suffered and continues to suffer irreparable harm as a result of the arbitrary and punitive transfer. He is also in imminent danger of being returned to prison. Plaintiff Cruz experiences hallucinations when placed in a closed cell. The medical treatment plaintiff Cruz received at Matteawan has been disrupted. The summary transfer has caused plaintiff Cruz severe mental aggravation.

B. PLAINTIFF GULLEY

32. In 1968, plaintiff Gulley was convicted of robbery, burglary and petty larceny and was sentenced to a term of imprisonment not to exceed ten years.

33. In July, 1969, plaintiff Gulley's sentence of imprisonment commenced when he was incarcerated at Attica Correctional Facility. From July 1969 to July 1973, he was incarcerated in prisons.



34. On or about September 1971, plaintiff Gulley began to "get sick". He suffered from claustrophobia in the closed cell and began to hallucinate and hear voices. He also had recurrent flashbacks to the prison riot at Attica and heard helicopters, people screaming and envisioned his friends being killed.

35. On July 1973, plaintiff Gulley was transferred from Attica to D&E at Matteawan. At D&E, plaintiff Gulley received small amounts of medication, was housed in an open ward, and occasionally saw a doctor.

36. On or about October 1973, a fight occurred at D&E and plaintiff Gulley was transferred from D&E to Attica. At Attica, he was placed in segregation for thirty days. While in segregation, plaintiff Gulley suffered from claustrophobia and began to hallucinate and hear voices.

37. On or about November 1973, plaintiff Gulley was determined to be a mentally ill person in need of treatment pursuant to New York Correction Law §408 and was transferred from Attica to D&E at Matteawan. On or about January 1974, plaintiff Gulley was transferred from D&E to the general population at Matteawan. At Matteawan, plaintiff Gulley received medication (including spirine), was housed in an open ward, and occasionally saw a doctor.

38. On or about January 1975, a fight occurred at Matteawan and plaintiff Gulley was informed by defendant Sweeny that he would have to leave Matteawan. After the fight, plaintiff Gulley was placed in a restraining sheet in the hospital ward at Matteawan for about four days. Plaintiff Gulley was then taken to the Transfer Unit at Fishkill for a few days and was subsequently transferred to Clinton.

39. At Clinton, plaintiff Gulley was locked in a closed cell for 24 hours per day for two weeks. Because he received no medication for the first 48 hours, he began to hallucinate and hear voices. He was then given thorazine which was milder than the medication he had received at Matteawan and not effective.

40. After two weeks at Clinton, plaintiff Gulley was determined to be a mentally ill person in need of treatment pursuant to New York Correction Law §408 and was transferred to Matteawan. At Matteawan, plaintiff Gulley received adequate medication, was housed in an open ward and occasionally saw a doctor.

41.. Upon information and belief, on or about October 1975, plaintiff Gulley's order of commitment was extended as he was determined to be a mentally ill person in need of treatment pursuant to New York Correction Law §408.

42. On October 17, 1975, one of the inmates on Ward 6 became agitated after he was notified he was being transferred to prison. When



plaintiff Gulley and other inmates attempted to hold the inmate, a fight ensued involving numerous inmates and correctional officers.

43. On October 17, 1975, plaintiff Gulley was placed in the jail ward at Matteawan for about three hours and then placed in the hospital ward at Matteawan. At the hospital ward plaintiff Gulley was placed in a restraining sheet and given an injection that caused him to sleep on and off for about three days.

44. On October 20, 1975, plaintiff Gulley was seen by five doctors for about three minutes. One doctor asked him what day and year it was. When plaintiff Gulley stated it was 1965, the doctor stated that Gulley was faking it.

45. On October 21, 1975, plaintiff Gulley was transferred from the hospital ward at Matteawan to the Transfer Unit at Fishkill where he is currently held.

46. At the Transfer Unit at Fishkill, plaintiff Gulley is locked in a closed cell for 9 hours a day. Plaintiff Gulley has been informed that he will be returned to prison.

47. Plaintiff Gulley was at no time afforded a due process hearing or any opportunity to inquire into the circumstances of the transfer.

48. The transfer of plaintiff Gulley was motivated by defendants' desire to punish him for the October 17, 1975 incident at Matteawan.

49. Plaintiff Gulley is currently mentally ill and has suffered and continues to suffer irreparable harm as a result of the arbitrary and punitive transfer. He is also in imminent danger of being returned to prison. Plaintiff Gulley experiences hallucinations when placed in a closed cell. The medical treatment plaintiff Gulley received at Matteawan has been disrupted. The summary transfer has caused plaintiff Gulley severe mental aggravation.



C. PLAINTIFF PERRELLI

50. From 1954 to 1972, plaintiff Perrelli spent the majority of his time in civil mental institutions in New York either as a patient or on outpatient status.

51. In August, 1973 plaintiff Perrelli pleaded guilty to second degree robbery and was sentenced to an indeterminate sentence of imprisonment to have a maximum term of four years.

52. On September 25, 1973, plaintiff Perrelli's sentence of imprisonment commenced when he was incarcerated at Greenhaven Correctional Facility (hereinafter Greenhaven).

53. After spending approximately twenty minutes at Greenhaven, plaintiff Perrelli was determined to be a mentally ill person in need of treatment pursuant to New York Correction Law § 408 and was transferred to D & E at Matteawan.

54. At D & E at Matteawan, plaintiff Perrelli was housed in an open ward, provided with medication, and occasionally saw a doctor. Upon information and belief, he was diagnosed as suicidal, manic-depressive and claustrophobic.

55. On or about November 25, 1973, plaintiff Perrelli was placed in the general population at Matteawan. At Matteawan, he received valium, eleva and other medication. He was housed in an open ward and occasionally saw a doctor.



56. From on or about January 1975 to April 1975, plaintiff Perrelli initiated legal proceedings on his own behalf regarding the actions of the Parole Board.

57. On or about the morning of April 28, 1975, plaintiff Perrelli was informed that he was to be transferred to prison. Three hours later, he attempted to commit suicide by cutting both arms and his neck with a razor blade and then swallowing the razor blade. Plaintiff Perrelli was treated by a doctor at Matteawan who gave instructions that he was not to be moved.

58. On or about the afternoon of April 28, 1975, plaintiff Perrelli was handcuffed and forced to walk to the Transfer Unit at Fishkill Correctional Facility.

59. At the Transfer Unit, plaintiff Perrelli was placed in a straitjacket and was deprived of all medication for about five days. He was locked in a cell for about 9 hours each day. Plaintiff Perrelli began to hallucinate and hear voices.

60. On or about May 7, 1975, plaintiff Perrelli was handcuffed, placed in a car, and transferred to Greenhaven. He remained at Greenhaven in the hospital ward in a closed room.

61. On or about May 28, 1975, plaintiff Perrelli was determined to be a mentally ill person in need of treatment pursuant to New York Correction Law §408 and was transferred from Greenhaven to D&E at Matteawan.



62. On or about July 1975, plaintiff Perrelli was transferred from D&E at Matteawan to the general population at Matteawan.

63. Plaintiff Perrelli was at no time afforded a due process hearing or any opportunity to inquire into the circumstances of his transfer on April 28, 1975.

64. Plaintiff Perrelli was transferred for punitive reasons. The summary transfer caused plaintiff Perrelli severe mental and physical harm.

#### FIRST CAUSE OF ACTION

65. Plaintiffs restate, reallege and incorporate each and every allegation in paragraphs 1-64.

66. The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property without due process of law."

67. The arbitrary and summary transfer of plaintiffs from Matteawan to prison without a prior hearing violates their rights to due process of law under the Fourteenth Amendment to the United States Constitution.

#### SECOND CAUSE OF ACTION

68. Plaintiffs restate, reallege and incorporate each and every allegation in paragraphs 1-67.

69. The defendants' punitive transfer of mentally ill inmates from Matteawan to prison violates the plaintiffs' right to treatment under the due process clause of the Fourteenth Amendment to the United States Constitution and New York Correction Law §410.

THIRD CAUSE OF ACTION

70. Plaintiffs restate, reallege and incorporate each and every allegation in paragraphs 1-69.

71. New York Correction Law §410 provides in part:

"Whenever any prisoner, who shall have been confined in such hospital as a mentally ill person, shall have recovered before the expiration of his sentence, and the superintendent shall so certify in writing to the agent and warden or other person in charge of the institution, from which such prisoner was received or to which the commissioner of correction may direct that he be transferred, such prisoner shall forthwith be transferred to the institution from which he came by the superintendent of the hospital, or if received from one of the state prisons, to such state prison as the commissioner of correction may direct; and the warden or other officer in charge of such institution shall receive such prisoner into such institution, and shall, in all respects, treat him as when originally sentenced to imprisonment. Any inmate not a prisoner, held upon an order of a court or judge, in a criminal proceeding, may be discharged therefrom, upon the superintendent's certificate of recovery, made to and approved by such court or judge."



72. The defendants' transfer of mentally ill inmates from Matteawan to prison violates plaintiffs' rights under New York Correction Law §410.

#### VII. CONCLUSION

73. Plaintiffs have no other plain, adequate or complete remedy to redress these wrongs. Plaintiffs will continue to suffer irreparable injury from the practices set forth above unless the injunctive relief sought herein is granted.

#### VIII. PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray, on behalf of themselves and all others similarly situated, that this Honorable Court.

1. Determine by order, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action.

2. Enter a declaratory judgment pursuant to Title 28 U.S.C. Section 2201 declaring the acts, practices and procedures complained of in this complaint as violative of the rights of the plaintiffs and the class they represent under the Fourteenth Amendment to the United States Constitution and New York Correction Law §410.

3. Enter preliminary and permanent injunctions pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining defendants,

their agents and employees and all persons acting in concert with them, from transferring mentally ill inmates from Matteawan to prison without <sup>or a hearing regarding whether they have recovered,</sup> their consent ~~and~~ thus depriving them of their right to treatment under the Fourteenth Amendment to the United States Constitution and New York Correction Law §410.

4. Enter preliminary and permanent injunctions pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining defendants, their agents and employees and all persons acting, in concert with them, from transferring mentally ill inmates from Matteawan to prison without their consent for punitive reasons without a prior hearing that affords inmates at Matteawan the following procedural protections:

- A. Written notice of the charges sufficiently in advance of a hearing thereon to permit adequate preparation of a defense.
- B. The right to confront and cross-examine adverse witnesses.
- C. The right to present evidence, including witnesses, on one's own behalf.
- D. The right to representation by counsel or counsel substitute.



E. The right to immunity from the use in any subsequent criminal prosecution or any statements made by the accused at the hearing.

F. A decision by an impartial tribunal made after a fair hearing and based on the evidence presented at the hearing.

G. A written statement setting forth the evidence relied upon and reasons for imposing punishment.

5. Order defendants to publish and promulgate written procedures for the transfer of inmates from Matteawan to prison which afford plaintiffs minimum requirements of due process of law as enumerated in Paragraph 4.

6. Enter a temporary restraining order and preliminary injunction, later to be made permanent, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure ordering defendants to transfer plaintiffs Cruz and Gulley, mentally ill persons in need of treatment, back to Matteawan with full restoration of all rights and privileges and opportunities previously enjoyed there, including expungement of any mention of the transfer from their records.

7. Award plaintiff Perrelli \$300,000 and plaintiffs Cruz and Gulley \$200,000 each in compensatory and punitive damages for the physical and psychological harm they have suffered as a result of defendants' violation of their rights under the Constitution of the United States.

8. Retain jurisdiction in this cause until the Court is satisfied that the unlawful practices, policies and acts alleged herein no longer exist and will not recur.

9. Grant such other and further relief as to this Court may seem just and proper, including costs.

DATED: Poughkeepsie, New York  
October 27, 1975

Respectfully submitted,

*Jane E. Bloom*

JANE E. BLOOM, of Counsel  
MID-HUDSON VALLEY LEGAL SERVICES PROJECT  
(Monroe County Legal Assistance Corp.)  
50 Market Street  
Poughkeepsie, New York 12601  
Attorneys for Plaintiffs  
(914) 452-7911



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

HECTOR CRUZ, et al.,

Plaintiffs,

-against-

AFFIDAVIT

BENJAMIN WARD, et al.,

Defendants.

---

HECTOR CRUZ, being duly sworn, deposes and says that he is currently incarcerated at the Transfer Unit at Fishkill Correctional Facility, Fishkill, New York; that he is a plaintiff herein; that he has read the foregoing complaint and knows the contents thereof and that the same are true of his own knowledge.

Hector Cruz  
HECTOR CRUZ

Sworn and subscribed to before me

this 27 day of October, 1975

Jane Ellen Bloom

JANE ELLEN BLOOM  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN DUTCHESS COUNTY  
COMMISSION EXPIRES MARCH 20, 1976

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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HECTOR CRUZ, et al.,

Plaintiffs,

-against-

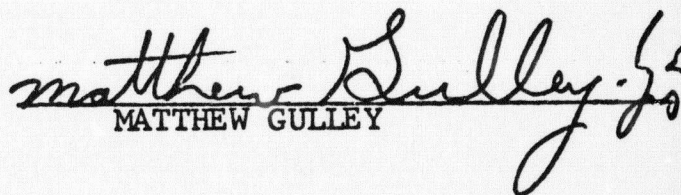
AFFIDAVIT

BENJAMIN WARD, et al.,

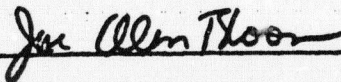
Defendants.

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MATTHEW GULLEY, being duly sworn, deposes and says that he is presently incarcerated at the Transfer Unit at Fishkill Correctional Facility, Fishkill, New York; that he is a plaintiff herein; that he has read the foregoing complaint and knows the contents thereof and that the same are true of his own knowledge.

  
MATTHEW GULLEY

Sworn and subscribed to before me  
this 27 day of October, 1975

  
\_\_\_\_\_

JANE ELLEN BLOOM  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN DUTCHES COUNTY  
COMMISSION EXPIRES MARCH 20, 1976



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

HECTOR CRUZ, et al.,

Plaintiffs,

-against-

AFFIDAVIT

BENJAMIN WARD, et al.,

Defendants.

---

CARMINE PERRELLI, being duly sworn, deposes and says that he is currently incarcerated at Matteawan State Hospital, Fishkill, New York; that he is a plaintiff herein; that he has read the foregoing complaint and knows the contents thereof and that the same are true of his own knowledge.

Mr Carmine Perrelli  
CARMINE PERRELLI

Sworn and subscribed to before me

this 27 day of October, 1975

Jane Ellen Bloom

JANE ELLEN BLOOM  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN DUTCHES COUNTY  
COMMISSION EXPIRES MARCH 30, 1976

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

HECTOR CRUZ, MATTHEW GULLEY, CARMINE  
PERRELLI, individually and on behalf  
of all persons similarly situated,

Plaintiffs,

-against-

BENJAMIN WARD, individually and in his  
capacity as Commissioner of the New York  
State Department of Correctional Services;  
VITO M. TERNULLO, individually and in his  
capacity as Director of Matteawan State  
Hospital; LAWRENCE SWEENEY, individually  
and in his capacity as Chief of Psychiatric  
Services at Matteawan State Hospital,

Defendants.

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NOTICE OF MOTION  
TO INTERVENE

75 CIV 5334

To the above-named defendants:

PLEASE TAKE NOTICE that the plaintiffs will bring on for hearing  
in Room 2804 of the United States Courthouse, Foley Square, New York, New  
York, on the 15th day of December, 1975 at 9:30 o'clock, or as soon there-  
after as counsel can be heard, the attached motion to intervene  
GEORGE DUNLEAVY, LOUIS POVEROMO, NICHOLAS PECHAR and GEORGE MITCHELL  
in this action as named party plaintiffs.

PLEASE TAKE NOTICE that opposing affidavits and answering memo-  
randum must be served upon counsel for plaintiffs at least three days before  
the return date of this motion.



DATED: Poughkeepsie, New York  
December 3, 1975

MID-HUDSON VALLEY LEGAL SERVICES PROJECT  
(Monroe County Legal Assistance Corp.)  
Attorneys for Plaintiffs  
50 Market Street  
Poughkeepsie, New York 12601  
JANE E. BLOOM, of Counsel

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

HECTOR CRUZ, MATTHEW GULLEY, CARMINE  
PERRELLI, individually and on behalf  
of all persons similarly situated,

Plaintiffs,

-against-

MOTION TO INTERVENE

75 CIV 5334

BENJAMIN WARD, individually and in his  
capacity as Commissioner of the New York  
State Department of Correctional Services'  
VITO M. TERNULLO, individually and in his  
capacity as Director of Matteawan State  
Hospital; LAWRENCE SWEENEY, individually  
and in his capacity as Chief of Psychiatric  
Services at Matteawan State Hospital,

Defendants.

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GEORGE DUNLEAVY, LOUIS POVEROMO, NICHOLAS PECHAR, and GEORGE  
MITCHELL

move this court:

- a. Pursuant to Rules 24(b)(2) of the Federal Rules of Civil  
Procedure, to intervene in this action as named party plaintiffs;
- b. Pursuant to Rules 6(d), 7, 8, and 24 of the Federal Rules of  
Civil Procedure, for an order allowing a reasonable extension of time to  
file a proposed intervenor's complaint, and/or deeming the affidavits of  
GEORGE DUNLEAVY, LOUIS POVEROMO, NICHOLAS PECHAR, and GEORGE MITCHELL  
to be verified pleadings pending determination of this motion.



The grounds for the motion are that it is appropriate for GEORGE DUNLEAVY, LOUIS POVEROMO, NICHOLAS PECHAR and GEORGE MITCHELL to intervene at this early stage of the proceedings, since the facts of their cases, the legal claims they make, and their claims for relief are all substantially identical to those of the named plaintiffs.

Jane E. Bloom  
JANE E. BLOOM  
MID-HUDSON VALLEY LEGAL SERVICES PROJECT  
(Monroe County Legal Assistance Corp.)  
Attorneys for Plaintiffs  
50 Market Street  
Poughkeepsie, New York 12601  
(914) 452-7911



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

HECTOR CRUZ, MATTHEW GULLEY, CARMINE,  
PERRELLI, individually and on behalf  
of all other persons similarly situated,

Plaintiffs,

-against-

BENJAMIN WARD, individually and in his  
capacity as Commissioner of the New York  
State Department of Correctional Services;  
VITO M. TERNULLO, individually and in his  
capacity as Director of Matteawan State  
Hospital; LAWRENCE SWEENEY, individually  
and in his capacity as Chief of Psychiatric  
Services at Matteawan State Hospital,

Defendants.

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AFFIDAVIT OF  
GEORGE DUNLEAVY  
IN SUPPORT OF  
MOTION TO INTERVENE  
GEORGE DUNLEAVY

GEORGE DUNLEAVY, being duly sworn deposes and says:

1. Plaintiff Dunleavy is a citizen of the United States and the State of New York. He is currently incarcerated at Matteawan State Hospital (hereinafter Matteawan).

2. On or about June, 1973, plaintiff Dunleavy was arrested for the crimes of attempted murder, assault, and possession of a weapon.

3. From June, 1973 to April, 1974, plaintiff Dunleavy was incarcerated in the Riker's Island Crisis Intervention Center which houses suicide risks in the Queens House of Detention Mental Health Therapeutic Community. During this period of time, plaintiff Dunleavy attempted suicide on at least four occasions.



4. In April, 1974, plaintiff Dunleavy was convicted of attempted murder, assault first degree, and possessing a weapon as a felony.

5. At the presentence hearing conducted by Justice Harold Birns, plaintiff Dunleavy's mental condition was examined. Justice Birns expressed concern regarding whether plaintiff Dunleavy would receive treatment in prison. Justice Birns contacted Deputy Commissioner of Corrections Patrick and was assured that he would receive psychiatric treatment at Matteawan.

6. On April 22, 1974, plaintiff Dunleavy was sentenced to a minimum term of 6 2/3 years and maximum of twenty years for the crime of attempted murder; a minimum term of five and a maximum term of fifteen years for the crime of assault 1st degree, and indeterminate term of imprisonment to have a maximum term of seven years for the crime of possessing a weapon. The commitment papers carry the notation "copy of psychiatric reports . . . accompany commitment". (Exhibits #1 - commitment attempted murder; Exhibit #2 - assault 1st degree; Exhibit #3 - possessing a weapon).

7. Plaintiff Dunleavy's sentence of imprisonment commenced when he was incarcerated at Greenhaven Correctional Facility on or about April 24, 1974. At Greenhaven, plaintiff Dunleavy was immediately placed in an observation cell.



8. On or about April 25, 1974, plaintiff Dunleavy was determined to be a mentally ill person in need of treatment pursuant to New York Correction Law §408 and was transferred to D & E at Fishkill. On June 12, 1974, plaintiff Dunleavy was committed to Matteawan pursuant to New York Correction Law §408. Plaintiff Dunleavy was diagnosed as suffering from claustrophobia and schizophrenia chronic indifferntiated.

9. On December 10, 1974, a 12 month Order of Retention was signed by Judge Raymond Aldrich, Jr., which ordered that plaintiff Dunleavy be retained at Matteawan for a period of 12 months because he was "mentally ill and in need of further care and treatment at a state hospital for the mentally ill. . ."

10. At Matteawan, plaintiff Dunleavy received medication and was occasionally seen by a doctor, and was housed in an open ward. Plaintiff Dunleavy became a law librarian and advised inmates, wrote briefs, and acted as a liason with the administration.

11. On or about March 16, 1975, plaintiff Dunleavy was accused of escaping from Matteawan. On March 17, 1975, plaintiff Dunleavy returned to Matteawan.

12. On March 17, 1975, plaintiff Dunleavy was placed on the jail ward for one week. The next week, plaintiff Dunleavy was placed in the hospital ward in a straight jacket. On or about April 1, 1975, plaintiff Dunleavy was placed in the general population at Matteawan.



13. Upon information and belief, on or about April 20, 1975 Martin Ogulnick, a psychologist, and Mariann Ferrauto, a psychiatric social worker, submitted a written report to John B. Wong, program coordinator at Matteawan, indicating that plaintiff Dunleavy should not be returned to prison.

14. On or about April 21, 1975, Dr. Feldman ordered that plaintiff Dunleavy's medication be increased because he appeared ill.

15. On or about April 23, 1975, Dr. Feldman told plaintiff Dunleavy he had to be evaluated. Dr. Feldman interviewed plaintiff Dunleavy for about five minutes and questioned him regarding the March 16, 1975 escape incident. On that day, Dr. Feldman indicated that plaintiff Dunleavy had recovered from his mental illness and should be returned to a correctional institution.

16. On April 30, 1975, plaintiff Dunleavy was transferred from Matteawan to the Transfer Unit at Fishkill where he was locked in a cell for nine hours a day. He received medication but did not see a doctor.

17. Upon information and belief, plaintiff Dunleavy was transferred as a punishment for his alleged escape on March 16, 1975.

18. Plaintiff Dunleavy was at no time afforded a due process hearing or any opportunity to inquire into the circumstances of his transfer on April 30, 1975.

19. On or about May 5, 1975, plaintiff Dunleavy<sup>was</sup> transferred to Greenhaven and placed in a locked cell for twenty one hours a day.



20. On or about May 5, 1975, plaintiff Dunleavy was given a three day supply of medication. He used all the medication the first day.

21. On or about May 9, 1975, plaintiff Dunleavy<sup>was</sup>/found in a cell having attempted to commit suicide by cutting both arms. He was then treated at a hospital at Greenhaven, put on medication, and kept in an observation cell for about one month. He was locked in the cell for twenty four hours a day and given heavy doses of medication.

22. On or about May 28, 1975, plaintiff Dunleavy was determined to be a mentally ill person in need of treatment pursuant to New York Correction law Section 408, transferred to Matteawan, and placed in the jail ward. After protest, he was transferred to the general population.

23. On or about June 10, 1975, a fight occurred involving numerous correctional officers and patients. Plaintiff Dunleavy and nine other inmates were placed on the jail ward as a result of the incident.

24. On the jail ward, plaintiff Dunleavy's ward doctor is Dr. Cakir. Dr. Cakir has evaluated plaintiff Dunleavy about once every four weeks. On each occasion, plaintiff Dunleavy has ordered that plaintiff Dunleavy be retained as a mentally ill person in need of treatment.

25. On or about October 15, 1975 Dr. Cakir informed plaintiff Dunleavy that the administration had indicated to Dr. Cakir that if the suit Negron v. Ward, 74 Civ. 1480, ( a writ challenging



the conditions and practices of placing inmates in the jail ward), continued plaintiff Dunleavy and others would have to be transferred to prison.

26. On October 28, 1975, the current action was commenced and defendants Ward, Ternullo and Sweeney were served with the order to show cause, summons and complaint, and memorandum of law.

27. In the morning of October 29, 1975, plaintiff Dunleavy spoke with Dr. Cakir on two occasions. Dr. Cakir never mentioned to plaintiff Dunleavy that he was to be evaluated that morning.

28. Within the last weeks, Dr. Cakir has ordered continued retention of plaintiff Dunleavy because he is a mentally ill person in need of treatment.

29. On or about October 29, 1975, at 11:00 a.m., Dr. Maciejewski approached plaintiff Dunleavy on the jail ward and asked whether plaintiff Dunleavy had been told that he was to evaluate plaintiff Dunleavy that day. Dr. Maciejewski is not plaintiff Dunleavy's ward doctor and has never spoken to plaintiff Dunleavy before during his 18 month confinement at Matteawan.

30. When plaintiff Dunleavy asked Dr. Maciejewski whether he had been sent by defendant Sweeney, Dr. Maciejewski did not reply. Plaintiff Dunleavy then walked away.

31. Upon information and belief, after plaintiff Dunleavy left, a correctional officer asked Dr. Maciejewski whether he had been sent by defendant Sweeney. Dr. Maciejewski replied that he had and asked "What was all this about?"

32. Upon information and belief, plaintiff Dunleavy's ward doctor, Dr. Cakir, knew nothing of the proposed evaluation.



33. On October 30, 1975, plaintiff Dunleavy was told by Dr. Cakir that defendant Sweeney was looking to speak with him.

34. Upon information and belief, it is defendant Sweeney's practice to have a doctor "evaluate" that patient prior to the patient's transfer.

35. Upon information and belief, plaintiff Dunleavy may be transferred in the near future from Matteawan to prison for punitive reasons without having "recovered" within the meaning of New York Correction Law §410 and without a prior hearing.

36. Plaintiff Dunleavy is currently mentally ill and has suffered and will continue to suffer irreparable harm as a result of his imminent transfer to prison. Plaintiff Dunleavy experiences hallucinations, becomes extremely nervous, and has trouble breathing when placed in a closed cell in prison. He has been diagnosed as claustrophobic.

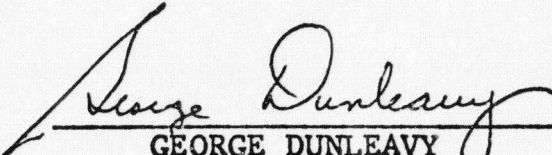
37. Plaintiff Dunleavy suffers irreparable harm by being placed under the continuous threat of transfer.

38. Plaintiff Dunleavy requests that he remain at Matteawan until he is no longer mentally ill.

39. Plaintiff Dunleavy maintains that the defendants' punitive transfer of mentally ill patients from Matteawan to prison without a prior hearing violates their rights to due process of law under the Fourteenth Amendment to the United States Constitution.

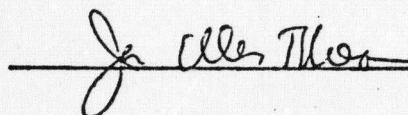
40. No prior applications for similar relief have been made.



  
GEORGE DUNLEAVY

Sworn to before me on

the 31 day of Octob, 1975

  
\_\_\_\_\_

JANE ELLEN BLOOM  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN DUTCHESS COUNTY  
COMMISSION EXPIRES MARCH 30, 1978

The People of the State of New York

Date

April 22, 1978

Present:

The Honorable

Harold Biron  
JUSTICE

GEORGE DUNLEVY  
Defendant

SEX AGE NYSID #

M 34 0586728Y

74-A-1284

The above-named defendant having been

- ☒ convicted of the crime of Possessing a weapon as a felony the 4<sup>th</sup> Court.  
☐ found to be a youthful offender for the criminal act of \_\_\_\_\_

under the above-designated indictment, it is

ORDERED that the said defendant be and hereby is sentenced to

- ☒ an indeterminate term of imprisonment which shall have a maximum term of seven (7) years and a minimum term of \_\_\_\_\_ years,  
☐ a reformatory period of imprisonment,  
☐ a definite term of imprisonment which shall have a term of \_\_\_\_\_,  
☐ a fine of \_\_\_\_\_ dollars and it is hereby directed that the defendant be imprisoned until the fine is satisfied for a maximum period of \_\_\_\_\_

and that the sentence herein shall run

- ☒ concurrently with the ☒ sentence  
☐ consecutively ☐ undischarged portion of the term of imprisonment

imposed on the defendant under the conviction upon the indictment numbered \_\_\_\_\_

and that the said defendant be and hereby is committed to the custody of the

- ☒ Department of Correctional Services of The State of New York until released in accordance with the law, and  
☒ being a male person twenty-one years old or older, the Commissioner of Correction of the City of New York is directed to deliver him to the Greenhaven Prison located at Stormville, New York.  
☐ being a male person more than sixteen and less than twenty-one years old, the Commissioner of Correction of the City of New York is directed to deliver him to the Reception Center located at Elmira, New York.  
☐ being a female person, the Commissioner of Correction of the City of New York is directed to deliver her to the Bedford Hills Correctional Facility located at Bedford Hills, New York.  
☐ Department of Correction of The City of New York until released in accordance with the law, and  
☐ being a male person, the Commissioner of Correction of the City of New York is directed to deliver him to the New York City Correctional Institution for Men.  
☐ being a female person, the Commissioner of Correction of the City of New York is directed to deliver her to the New York City Correctional Institution for Women.

DATE  
☒ THIRD COPY FORWARDED TO APPROPRIATE BOARD OF ELECTIONS.

A true extract from the minutes

CLERK OF COURT

EXHIBIT #2

SIGNATURE

TITLE

Norman Friedman  
Clerk of Court

Thomas J. Hallway  
Clerk of Court

of psychiatric reports and motion to set aside verdict  
as a sentence memorandum accompanying Commitment



The People of the State of New York

Date

April 22, 1972

Present:

The Honorable

HAROLD BIRNS  
JUSTICE

GEORGE DUNLEAVY  
Defendant

13 34 05867284 74-A-1286  
SEX AGE NYSD #

The above-named defendant having been

- ☒ convicted of the crime of Assault 1st degree the 3rd Count: C  
☐ found to be a youthful offender for the criminal act of \_\_\_\_\_

under the above-designated indictment, it is

ORDERED, that the said defendant be and hereby is sentenced to

- ☐ an indeterminate term of imprisonment which shall have a maximum term of fifteen (15) years and a minimum term of five (5) years,  
☐ a reformatory period of imprisonment,  
☐ a definite term of imprisonment which shall have a term of \_\_\_\_\_,  
☐ a fine of \_\_\_\_\_ dollars  
and it is hereby directed that the defendant be imprisoned until the fine is satisfied for a maximum period of \_\_\_\_\_

and that the sentence herein shall run

- ☒ concurrently with the ☒ sentence  
☐ consecutively ☐ undischarged portion of the term of imprisonment  
2nd & 4th Counts of this indictment  
imposed on the defendant under the conviction upon the indictment numbered \_\_\_\_\_

and that the said defendant be and hereby is committed to the custody of the

- ☒ Department of Correctional Services of The State of New York until released in accordance with the law, and  
☒ being a male person twenty-one years old or older, the Commissioner of Correction of the City of New York is directed to deliver him to the Greenhaven Prison located at Stormville, New York.  
☐ being a male person more than sixteen and less than twenty-one years old, the Commissioner of Correction of the City of New York is directed to deliver him to the Reception Center located at Elmira, New York.  
☐ being a female person, the Commissioner of Correction of the City of New York is directed to deliver her to the Bedford Hills Correctional Facility located at Bedford Hills, New York.  
☐ Department of Correction of The City of New York until released in accordance with the law, and  
☐ being a male person, the Commissioner of Correction of the City of New York is directed to deliver him to the New York City Correctional Institution for Men.  
☐ being a female person, the Commissioner of Correction of the City of New York is directed to deliver her to the New York City Correctional Institution for Women.

April 22, 1972

A true extract from the minutes

Norman Friedman  
CLERK OF COURT

☒ THIRD COPY FORWARDED TO APPROPRIATE BOARD OF ELECTIONS.

EXHIBIT

Thomas J. Bellowsy  
SIGNATURE

Chas. H.  
TITLE

2 psychiatric reports and motion to set aside verdict  
is a pre-sentence memorandum accompany commitment



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

HECTOR CRUZ, MATTHEW GULLEY, CARMINE  
PERRELLI, individually and on behalf  
of all other persons similarly situated,

Plaintiffs,

-against-

BENJAMIN WARD, individually and in his  
capacity as Commissioner of the New York  
State Department of Correctional Services,  
VITO M. TERNULLO, individually and in his  
capacity as Director of Matteawan State  
Hospital; LAWRENCE SWEENEY, individually  
and in his capacity as Chief of Psychiatric  
Services at Matteawan State Hospital,

Defendants.

---

AFFIDAVIT OF LOUIS  
POVEROMO IN SUPPORT  
OF MOTION TO INTER-  
VENE LOUIS POVEROMO

LOUIS POVEROMO, being duly sworn, deposes and says:

1. Plaintiff Poveromo is a citizen of the United States and the State of New York. He is currently incarcerated at Matteawan State Hospital (hereinafter Matteawan).
2. On or about June 1974, plaintiff Poveromo was found guilty by verdict of robbery. On August 6, 1974, he was sentenced to a minimum term of ten years and a maximum term of twenty years.
3. Plaintiff Poveromo's sentence of imprisonment commenced when he was incarcerated at Greenhaven Correctional Facility on or about August 27, 1974.
4. Plaintiff Poveromo remained at Greenhaven for about eleven days on the hospital ward.
5. On September 1974, plaintiff Poveromo was determined to be a mentally ill person in need of treatment pursuant to New York Correction



Law §408 and was transferred to Matteawan State Hospital.

7. Upon information and belief, plaintiff Poveromo was diagnosed at Matteawan as paranoid-schizophrenic-suicidal.

8. At Matteawan, plaintiff Poveromo received medication, was occasionally seen by a doctor, and was housed in an open ward.

9. At Matteawan, plaintiff Poveromo received a periodic evaluation every four to six weeks.

10. On or about January 24, 1975, plaintiff Poveromo received a periodic evaluation from Dr. Sirman and Dr. Sirman determined that plaintiff Poveromo was in need of treatment and should be retained at Matteawan.

11. On or about January 26, 1975, plaintiff Poveromo attempted to stop a disruption between an inmate and a guard.

12. On or about January 28, 1975, plaintiff Poveromo was transferred to Clinton Correction Facility. Plaintiff Poveromo did not see a doctor prior to his transfer. Plaintiff Poveromo was at no time afforded a due process hearing or any opportunity to inquire into the circumstances of his transfer on January 28, 1975.

13. Upon information and belief, plaintiff Poveromo was transferred from Matteawan to Clinton as a punishment for his alleged disruption on January 26, 1975.

14. At Clinton, plaintiff Poveromo was placed in a locked cell for twenty four hours a day. During the first day in the cell, plaintiff



Poveromo suffered from claustrophobia and began to hallucinate and hear voices. Plaintiff Poveromo was then placed in a strip cell and given some medication.

15. On or about February 1975, plaintiff Poveromo was determined to be a mentally ill person in need of treatment pursuant to New York Correction Law §408 and was transferred from Clinton to Matteawan.

16. Plaintiff Poveromo has been involved in the action Negron v. Ward, 74 Civ. 1780, an action challenging the conditions and practices of placing inmates in the jail ward at Matteawan.

17. Plaintiff Poveromo has been subjected to the threat of transfer to prison if his involvement in litigation continues.

18. Plaintiff Poveromo maintains that is is defendants' practice to transfer patients from Matteawan to prison as a punitive measure when they have not recovered. Plaintiff Poveromo suffers irreparable harm by being placed under the threat of transfer for possible alleged misbehavior and involvement in litigation.

19. Plaintiff Poveromo maintains that the defendants' punitive transfer of mentally ill patients from Matteawan to prison without a prior hearing violates their rights to due process of law under the Fourteenth Amendment to the United States Constitution.

20. Plaintiff Poveromo requests that he remain at Matteawan until he is no longer mentally ill.

21. No prior applications for similar relief have been made.



Louis Poveromo  
LOUIS POVEROMO

Sworn to before me this  
26 day of November, 1975

Jane Ellen Bloom

JANE ELLEN BLOOM  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN DUTCHES COUNTY  
COMMISSION EXPIRES MARCH 30, 1976

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

HECTOR CRUZ, MATTHEW GULLEY, CARMINE  
PERRELLI, individually and on behalf  
of all persons similarly situated,

Plaintiffs,

-against-

AFFIDAVIT OF NICHOLAS  
PECHAR IN SUPPORT OF  
MOTION TO INTERVENE  
NICHOLAS PECHAR

BENJAMIN WARD, individually and in his  
capacity as Commissioner of the New York  
State Department of Correctional Services;  
VITO M. TERNULLO, individually and in his  
capacity as Director of Matteawan State  
Hospital; LAWRENCE SWEENEY, individually  
and in his capacity as Chief of Psychiatric  
Services at Matteawan State Hospital,

Defendants.

---

NICHOLAS PECHAR, being duly sworn, deposes and says:

1. Plaintiff Pechar is a citizen of the United States and the State of New York. He is currently incarcerated at Matteawan State Hospital (hereinafter Matteawan).
2. From 1961 through mid-1974 plaintiff Pechar was intermittently housed in psychiatric facilities, including Knob Hall on the grounds of the United States Correctional Facility, Lexington, Kentucky, the mental observation unit at Riker's Island, Central Islip State Hospital, Matteawan, Manhattan State Hospital, the mental observation unit at "the Tombs", and the Crisis Intervention Center, Branch Queens.



3. In mid-1974 plaintiff Pechar was sentenced in New York County Supreme Court to a term of two to four years for the crimes of robbery, ~~first~~ degree, and possession of a weapon.

4. Plaintiff Pechar's sentence of imprisonment commenced when he was incarcerated at Greenhaven Correctional Facility.

5. Upon arrival at Greenhaven Correctional Facility plaintiff Pechar was placed in a locked room in the hospital unit for mental observation and placed on medication.

6. After spending approximately ten days at Greenhaven Correctional Facility, plaintiff Pechar was transferred to the Diagnostic and Evaluation Unit at the Fishkill Correctional Facility (hereinafter D & E).

7. While at D & E plaintiff Pechar was determined to be a mentally ill person in need of treatment pursuant to New York Correction Law §408 and was transferred to Matteawan on or about September 20, 1974.

8. On or about April 7, 1975 an order was entered by the Dutchess County Supreme Court authorizing plaintiff Pechar's continued retention at Matteawan for an additional twelve months.

9. Sometime during the first five days of October, 1975 plaintiff Pechar approached defendant Sweeney on Ward 2 and asked defendant Sweeney whether it would be possible to institute a Transcendental Meditation program at Matteawan.

10. In response, defendant Sweeney initially replied, "Leave well enough alone and mind your own business", or words of similar import.

11. Upon continued inquiry by plaintiff Pechar, defendant Sweeney replied, "I will have you evaluated and transferred", or words of similar import.

12. On or about October 6, 1975 plaintiff Pechar was summoned to Ward 21 at Matteawan for a psychiatric evaluation.

13. Plaintiff Pechar had last been evaluated less than one month earlier.

14. Since plaintiff Pechar's admission to Matteawan in September, 1974 plaintiff Pechar has usually been evaluated at two to three month intervals.

15. During the course of plaintiff Pechar's psychiatric evaluation on October 6, 1975 plaintiff Pechar saw words indicating that the evaluation was being conducted at defendant Sweeney's request written, next to his name only, on a sheet of paper containing the names of patients scheduled to be evaluated that was held by the physician performing the evaluation, Dr. Maciejewski.

16. During the course of performing said evaluation Dr. Maciejewski stated to plaintiff Pechar "Doctor Sweeney is looking to get rid of you", or words of similar import.

17. As a result of said evaluation, Dr. Maciejewski recommended that plaintiff Pechar be retained at Matteawan.

18. Upon information and belief, shortly after the date of said evaluation Dr. Cakir replaced Dr. Maciejewski as the physician primarily responsible for the treatment of plaintiff Pechar.



19. On or about October 7, 1975, plaintiff sent a letter to Herman Schwartz, Commissioner of the New York State Commission of Correction, in which plaintiff Pechar expressed concern that he might be transferred from Matteawan to prison for punitive reasons, without having recovered from his mental illness.

20. On October 20, 1975 Edward Koren of the New York State Commission of Correction sent a letter to defendant Ternullo in which Mr. Koren asked defendant Ternullo whether there were plans to transfer plaintiff Pechar to prison, and, if there were, what the reasons for such transfer were.

21. Upon information and belief, Mr. Koren has received no response to his letter of October 20, 1975, as of this date.

22. Plaintiff Pechar fears that he may be transferred from Matteawan to prison for punitive reasons, without having recovered from his mental illness.

23. Plaintiff Pechar maintains that the defendants' punitive transfer of mentally ill patients from Matteawan to prison without a prior hearing violates their rights to due process of law under the Fourteenth Amendment to the United States Constitution.

24. Plaintiff Pechar requests that he remain at Matteawan until he is no longer mentally ill.

25. No prior applications for similar relief have been made.

s/ Nicholas Pechar

NICHOLAS PECHAR

Sworn and subscribed to before me  
this 2nd day of December, 1975

s/ Gina Zeisel

JRAT



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

HECTOR CRUZ, MATTHEW GULLEY, CARMINE  
PERRELLI, individually and on behalf  
of all persons similarly situated,

Plaintiffs,

-against-

BENJAMIN WARD, individually and in his  
capacity as Commissioner of the New York  
State Department of Correctional Services;  
VITO M. TERNULLO, individually and in his  
capacity as Director of Matteawan State  
Hospital; LAWRENCE SWEENEY, individually  
and in his capacity as Chief of Psychiatric  
Services at Matteawan State Hospital,

Defendants.

---

AFFIDAVIT OF GEORGE  
MITCHELL IN SUPPORT OF  
MOTION TO INTERVENE  
GEORGE MITCHELL

GEORGE MITCHELL, being duly sworn, deposes and says:

1. Plaintiff Mitchell is a citizen of the United States and the State of New York. He is currently incarcerated at Matteawan State Hospital (hereinafter Matteawan).
2. In 1954 plaintiff Mitchell attempted suicide and, as a result, was civilly committed to Matteawan.
3. From plaintiff Mitchell's release from Matteawan in late 1955 until he was arrested in 1958 plaintiff Mitchell was an out-patient at the Kings County Psychiatric Ward.

4. In July, 1973 plaintiff Mitchell was sentenced in Kings County Supreme Court to a term of imprisonment of zero to fifteen years for the crime of attempted murder.

5. After plaintiff Mitchell was sentenced he was sent to the Greenhaven Correctional Facility where he remained about one week. He was then transferred to the Ossining Correctional Facility, where he remained for about one week. He was then transferred to the Attica Correctional Facility.

6. While at the Attica Correctional Facility, plaintiff Mitchell was determined to be a mentally ill person in need of treatment pursuant to New York Correction Law §408 and was transferred to Matteawan on or about September 3, 1974.

7. In October, 1974 plaintiff Mitchell told a nurse at Matteawan that he wanted to return to prison.

8. Thereafter, plaintiff Mitchell was evaluated by Dr. Cakir and transferred to the Clinton Correctional Facility, arriving on or about October 31, 1974.

9. Upon arrival at the Clinton Correctional Facility plaintiff Mitchell was immediately placed under mental observation in a locked room.

10. On or about November 5, 1974 plaintiff Mitchell was transferred from the Clinton Correctional Facility to the Diagnostic and Evaluation Unit at the Fishkill Correctional Facility (hereinafter D & E).



11. While at D & E, plaintiff Mitchell was determined to be a mentally ill person in need of treatment pursuant to New York Correction Law §408 and was transferred to Matteawan on or about December 10, 1974.

12. In June, 1975 plaintiff Mitchell was placed on the jail ward at Matteawan and remained there for approximately two days.

13. Upon information and belief, plaintiff Mitchell was placed on the jail ward on said occasion in order to prevent him from injuring himself.

14. In July, 1975 plaintiff Mitchell was placed on the jail ward for approximately four days.

15. In August, 1975 plaintiff Mitchell was placed on Ward 6 at Matteawan.

16. Upon information and belief, Ward 6 is a ward on which patients who have had frequent disputes with other patients are placed in order to receive "aversive behavior conditioning".

17. On or about October 10, 1975 Dr. Vicarthur Factora performed a psychiatric evaluation of plaintiff Mitchell.

18. Upon information and belief, at the time he performed said psychiatric evaluation Dr. Factora was not certified or licensed to practice psychiatry in New York State.

19. Said evaluation consisted in part of an interview of plaintiff Mitchell by Dr. Factora which lasted approximately five minutes.

20. Upon information and belief, as a result of performing said evaluation Dr. Factora recommended that plaintiff Mitchell be transferred to prison.

21. On or about October 17, 1975 plaintiff Mitchell was orally informed by a correctional officer that he was to be transferred from Matteawan to prison.

22. Upon information and belief, plaintiff Mitchell thereupon became emotionally upset, precipitating an altercation in which numerous correctional officers and patients eventually became involved.

23. After said altercation had terminated plaintiff Mitchell was placed in a restraining sheet on the hospital ward at Matteawan.

24. While plaintiff Mitchell was <sup>on</sup> said hospital ward, Dr. Feldman, in the presence of plaintiff Mitchell and others, stated that, in his opinion, plaintiff Mitchell should not be transferred from Matteawan to prison.

25. Sometime thereafter plaintiff Mitchell was given two injections which rendered him unconscious.

26. Upon information and belief, plaintiff Mitchell was thereafter placed in a straitjacket, taken to the Fishkill Correctional Facility, and placed in a bed in a locked room.

27. On the morning after the day on which plaintiff Mitchell had been transferred to the transfer unit, Dr. Feldman visited plaintiff Mitchell.



28. Upon information and belief, after visiting plaintiff Mitchell on that occasion, Dr. Feldman stated to a correctional officer that, in his opinion, plaintiff Mitchell should not be transferred to prison.

29. While on the transfer unit, plaintiff Mitchell received the amount of medication he had been receiving at Matteawan, plus an additional nightly injection to help him sleep.

30. On or about October 26, 1975 at approximately 9:30 p.m. plaintiff Mitchell cut his left forearm and wrist with a razor blade.

31. As a result, plaintiff Mitchell was taken to the hospital unit at the Fishkill Correctional Facility for treatment.

32. After having been treated, plaintiff Mitchell was returned to the transfer unit.

33. On or about October 27, 1975 at approximately 1:00 a.m. plaintiff Mitchell cut his left forearm and wrist with a razor blade.

34. As a result, plaintiff Mitchell was taken to the hospital unit for treatment.

35. On or about October 28, 1975, without any further psychiatric evaluation having been performed, plaintiff Mitchell was transferred to the Clinton Correctional Facility.

36. Upon arrival at the Clinton Correctional Facility, plaintiff Mitchell was immediately placed under mental observation in a locked room.

37. While at the Clinton Correctional Facility, plaintiff Mitchell was determined to be a mentally ill person in need of treatment pursuant to New York Correction Law §408.

38. On or about November 15, 1975 plaintiff Mitchell was transferred to Matteawan.

39. After spending approximately three days on the reception ward at Matteawan, plaintiff Mitchell was placed on Ward 6.

40. Upon information and belief, the usual practice at Matteawan is for a newly arrived patient to spend at least one or two weeks on the reception ward before being placed on another ward.

41. Plaintiff Mitchell maintains that he was transferred from Matteawan to prison as a punitive measure because he had come to be regarded as a "trouble-maker" by defendants and because he had been involved in a fight in which correctional officers were injured.

42. Plaintiff Mitchell maintains that the defendants' punitive transfer of mentally ill patients from Matteawan to prison without a prior hearing violates their rights to due process of law under the Fourteenth Amendment to the United States Constitution.

43. Plaintiff Mitchell requests that he remain at Matteawan until he is no longer mentally ill.



44. No prior applications for similar relief have been made.

/ George Mitchell  
GEORGE MITCHELL

Sworn to before me this

24 day of December, 1975

/ Anne Zeisel

JURAT

UNITED STATES DISTRICT COURT

X

HECTOR CRUZ, MATTHEW GULLEY, CARMINE :  
PERRELLI, GEORGE DUNLEAVY, LOUIS :  
POVEROMO, NICHOLAS PECHAR, and :  
GEORGE MITCHELL, individually and :  
on behalf of all other persons :  
similarly situated, :

75 Civ. 5334 (GLG)

Plaintiffs, :

O P I N I O N

-against- :

BENJAMIN WARD, individually and :  
in his capacity as Commissioner of :  
the New York State Department of :  
Correctional Services; VITO M. :  
TERNULLO, individually and in his :  
capacity as Director of Matteawan :  
State Hospital; LAWRENCE SWEENEY, :  
individually and in his capacity :  
as Chief of Psychiatric Services :  
at Matteawan State Hospital, :

Defendants. :

X

A P P E A R A N C E S :

MID HUDSON VALLEY LEGAL SERVICES PROJECT  
Attorney for Plaintiffs  
50 Market Street

Poughkeepsie, New York 12601

By: JANE E. BLOOM, ESQ.  
Of Counsel

LOUIS J. LEFKOWITZ, ESQ.  
Attorney for Defendants  
New York State Department of Law  
Two World Trade Center  
New York, N. Y.

By: ARLENE SILVERMAN, ESQ.  
Of Counsel



G O E T T E L , D. J.

On October 28, 1975, plaintiffs Cruz, Gulley and Perrelli, inmates in the New York State prison system, commenced an action under the provisions of 42 U.S.C. §1983 to enjoin defendant officials of the New York State Department of Corrections and Matteawan State Hospital from transferring them from Matteawan to the general prison system without a hearing prior to transferral. Plaintiffs allege, inter alia, that these transfers were punishments imposed on them because of their having caused trouble in the hospital. On November 11, 1975, an order to show cause was issued on plaintiff's motion for a preliminary injunction. On December 15, 1975, plaintiffs Dunleavy, Poveromo, Pechar and Mitchell intervened as party plaintiffs.

Hearings at Matteawan on December 30, 1975, January 27, and March 8, 1976 and in New York City on March 10, 1976<sup>\*</sup> established the following facts.

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\* These hearings were held before the writer when a U.S. Magistrate. The case was reassigned for all purposes after appointment to the District Court.

Plaintiff, Hector Cruz, while serving a life sentence at Attica Correctional Facility, was placed in segregation in 1973. After an attempted suicide in December, 1973, he was transferred to the Diagnostic and Evaluation Center at Fishkill Correctional Facility. On January 4, 1974, Cruz was admitted to Matteawan under the provisions of Article 16 of the New York Correction Law (McKinney's Laws of New York, Chapter 10B, as amended) with a diagnosis of "Schizophrenia, residual type". Cruz's treatment at Matteawan included prescriptive medication, twice weekly consultations with a psychologist, and monthly psychiatric evaluations. Cruz was placed in an open ward custody setting. In May, 1974, Cruz apparently became actively hostile toward others in the hospital. As his treatment records note, he agreed with correctional officers that "the next time he [was] involved in any physical violence he will ask for a transfer". On August 27, 1974, Cruz was, at his own request, transferred to Clinton Correctional Facility. After only two weeks in confinement (without treatment or medication) he was again sent to the Diagnostic and Evaluation unit at Matteawan. Five weeks later Cruz was admitted to the hospital again, with a diagnosis of schizophrenia with aggressive features. From



October 30, 1974, through September 17, 1975, Cruz's pattern of treatment resumed, again interspersed with several reports of altercations with members of the hospital community. An evaluation by a staff psychiatrist on September 17, 1975 noted:

" .... the patient needs further hospitalization because he has poor self-control, immature and appeared to be unpredictable in his behavior."

On October 17, 1975, Cruz was involved in a fight in his ward (which apparently also involved some of the other plaintiffs). Three days later he was evaluated by a panel of six psychiatrists. This evaluation was not a usual hospital routine and its use in this case was not explained. Based upon this evaluation, Cruz was determined to have "recovered" from his mental illness and was ordered transferred out of Matteawan although his final diagnosis was schizophrenia, residual type.

Plaintiff, Matthew Gulley, was confined at Attica beginning in 1968 under a sentence of ten years. While in segregation at Attica, Gulley became depressed, was beset by

hallucinations and made several attempts at suicide. On December 1, 1973, he was transferred to the Matteawan Diagnostic and Evaluation unit. On January 28, 1974, he was admitted to Matteawan with a diagnosis of unspecified psychosis and borderline mental retardation. An early psychiatric evaluation noted a tendency toward "episodic outbursts of aggressive behavior". Gulley's status and treatment at Matteawan included medication, psychological counselling, monthly psychiatric evaluations and open ward confinement. Throughout his confinement at Matteawan Gulley was felt by authorities to be a discipline problem. In January, 1975, he was involved in a fight in his ward and the next psychiatric evaluation note, entered on February 11, 1975, indicated the physician's conclusion that a return to prison might be necessary if the violence persisted. On the same day Gulley was transferred to the jail ward and was placed in a restraining sheet. On February 13th and 14th, he was evaluated by defendant, Lawrence Sweeney, the Chief of Psychiatry at Matteawan. Dr. Sweeney attributed the plaintiff's actions to alcohol and diagnosed Gulley as having a divided character with depressive features.



After the interview Gulley was sent, without notice, to Clinton Correctional Facility where he was confined from February 25 to March 11, 1975. This confinement was marked by an almost complete absence of professional assistance and the total absence of medication.

After only two weeks at Clinton, prison authorities ordered Gulley returned directly to the hospital population at Matteawan. Once there, Gulley's treatment resumed on substantially the same terms as before his transfer. In July, 1975, a retention order under the provisions of Section 408 of the N.Y. Correction Law was obtained for Gulley by the defendants. In the October 9, 1975 periodic evaluation, a staff psychiatrist made a recommendation for further retention of Gulley due to his fear of prison and unpredictable behavior, notwithstanding the psychiatrist's acknowledgment of the absence of any psychosis. On October 17, 1975, Gulley was involved in a fight in the ward and was once again placed in a restraining sheet in the jail ward. Three days later Gulley was found to be well and was sent to the Transfer unit for prison reassignment.

On April 25, 1974, George Dunleavy, having been in confinement at Greenhaven Correctional Facility, was determined to be a mentally ill person in need of treatment and was sent to the Diagnostic and Evaluation unit at Matteawan. On June 11, 1974, Dunleavy was diagnosed as a chronic schizophrenic with an anti-social personality and episodic drunkenness. The course of treatment Dunleavy received while hospitalized was substantially similar to that received by Cruz and Gulley. On December 19, 1974, a twelve-month retention order under the provisions of Correction Law §408 was obtained by the defendants on Dunleavy. Dr. Ali Sirman, a Matteawan staff psychiatrist, acknowledged that neither during the period of the §408 retention nor subsequently was Dunleavy, in his opinion, ever mentally ill. Dr. Sirman further testified that Dunleavy was merely neurotic and had difficulties in prison but was retained at Matteawan because he was helpful to the staff and had a rapport with the other prisoners. On March 16, 1975, Dunleavy was accused of attempting to escape from the hospital. In a periodic evaluation on April 23, 1975, Dunleavy was diagnosed as a chronic undifferentiated



schizophrenic without psychosis and, shortly thereafter, was transferred back to prison. After four weeks in Greenhaven, Dunleavy attempted suicide by slashing his wrists, was transferred to the hospital, and then to Matteawan, diagnosed as an episodic schizophrenic with a personality disorder leading to anti-social behavior. The staff psychologist at Matteawan testified that Dunleavy's condition before and after this transfer was substantially unchanged. In November, 1975, a §408 retention application was made on Dunleavy and, although staff psychiatrists indicate he is not psychotic, he remains at Matteawan.

Louis Poveromo was incarcerated at Greenhaven when, in September, 1974, he was determined to be a mentally ill person in need of treatment and was transferred to Matteawan. He was diagnosed as psychotic and drug dependent. His treatment was similar to that received by the other plaintiffs. In mid-January a §408 retention order was requested by the hospital and granted by the court. Late in January, 1975, however, Poveromo was involved in a fight with correctional officers and was immediately thereafter evaluated by a staff psychiatrist who diagnosed Poveromo as a "troublemaker" for

whom Matteawan had "no more to offer". The doctor "prescribed" transfer to a correctional institution. After this evaluation Poveromo was immediately pronounced cured and sent to Clinton prison. There Poveromo was continuously kept in a stripped cell under observation. After one month of such observation Poveromo was returned to Matteawan diagnosed as being anti-social and having a personality disorder.

George Mitchell, while confined in a segregation cell at Attica, began to hear voices and see visions in June, 1974. Three months later he was transferred under §408 to Matteawan where he was diagnosed as having an unspecified psychosis and a personality defect. After a month at Matteawan, at his own request Mitchell was returned to prison. After several weeks at Clinton Mitchell was again sent to Matteawan where, for six months, his treatment paralleled that of the other plaintiffs. In July, 1975, Mitchell was voluntarily transferred to the jail ward at Matteawan because of his fear of doing violence to himself or others. On October 10, 1975, Mitchell was evaluated by a staff psychiatrist who diagnosed him as recovered but bearing a "residual" amount of schizophrenia. Mitchell was not told of the psychiatrist's



conclusions or of his recommendation that Mitchell be returned to prison. When later told of the decision by a correctional officer who was involved in his transfer, Mitchell, in the words of a staff psychiatrist, "went berserk" and was taken to the transfer unit in a strait jacket. While at the transfer unit Mitchell attempted suicide several times but was nevertheless transferred to Clinton prison. After two weeks at Clinton prison authorities again returned Mitchell to Matteawan, under the provisions of §408, where he now remains.

Martin Ogulnick, a staff psychologist at Matteawan, testified that there were no set times for patient evaluations by the hospital psychiatrists, that the evaluations would occur at intervals of from two to three weeks to four months and would last from two to twenty minutes. Mr. Ogulnick testified that he had been working with both Dunleavy and Mitchell and that, in his opinion, neither should have been returned to prison. He acknowledged that different members of the Matteawan staff had different criteria for treatment and retention decisions. Mr. Ogulnick opined that neuroses were treatable at Matteawan.

Dr. Sweeney, Chief of Psychiatric Services at Matteawan, testified at length on the relative differences in the custodial conditions between the correctional facilities and Matteawan and concluded that a major attraction of the hospital was that it represented an easier "bit" for the inmate than prison. Dr. Sweeney acknowledged that before an inmate can be committed to Matteawan he must be examined by two disinterested physicians and their report must be approved by a state judge. Dr. Sweeney stated that these evaluations included reviews of the prison and medical files of the inmate, as well as personal evaluations by the physicians. Dr. Sweeney acknowledged that his staff's diagnoses do not always agree with such outside physicians' conclusions, but opined that these discrepancies were due to the outside professionals lack of personal familiarity with the patients. Dr. Sweeney inferred that his staff was better able to detect malingering and shamming than outside professionals. He testified that evaluations were conducted on a regular four-to-six week schedule. Dr. Sweeney stated that a patient would not be retained if he did not have a treatable psychosis, yet acknowledged that patients with neurotic disorders



were retained if the hospital budget permitted. He had set up a separate ward for the aggressive "acting out" patients so that, in Dr. Sweeney's words, they were "putting all the dynamite in one box". Dr. Sweeney acknowledged that four of the seven psychiatrists on his staff were not licensed for private practice in New York and that neither he nor any of his psychiatrists were board certified in psychiatry. He denied that any of the plaintiffs' transfers were related to their altercations with correctional personnel, although acknowledging that such incidents could lead to reevaluations of status.

Dr. Ali Sirman testified that he was the psychiatrist in charge of the unit responsible for certifying patients back to prison. He described the standard he applied to be whether the patient has "a contact with reality, is he competent, does he know what he is doing". Dr. Sirman acknowledged that there are neither written nor oral standards for his decisions as to retention or transfer and that he would retain a neurotic who was having difficulty functioning if the hospital condition permitted it. Dr. Sirman described the conditions of the

several plaintiffs as either anti-social personalities or personality disorders with manipulative characteristics. He denied that any pressure from the guards induced his transfer decisions or that any of the disorders of the plaintiffs were treatable at Matteawan. Dr. Sirman testified that the examination schedule was totally random and that a psychiatrist may not see a given patient for a year or more after an evaluation. Dr. Sirman explained the presence of Dunleavy as one who assisted the administration and was retained despite an absence of illness. He stated that once such a patient ceases to be an aid to the hospital staff the reason for his retention disappears and he should be returned to prison. Dr. Sirman further acknowledged that other non-psychotics were retained at Matteawan.

Dr. Factora testified that he was on the staff at Matteawan and performed the October 9, 1975 evaluation of Gulley and recommended retention. Dr. Factora denied that Dr. Sweeney ever questioned his retention recommendations. (Dr. Sweeney testified that he had so questioned Dr. Factora's recommendations.) Dr. Factora testified that, contrary to the



opinions expressed by other psychiatrists, personality disorders were treatable at Matteawan. He admitted that he had diagnosed Gulley as being in need of treatment on October 9, 1975, but well enough to be transferred on October 20, 1975. Dr. Factora stated that his change of mind was due to the occurrence of a group psychiatric evaluation on the later date wherein Gulley was properly diagnosed as recovered, but that as of November, 1975, he would agree that Mitchell was again in need of hospitalization. Dr. Factora acknowledged that he had, on earlier occasions, acceded to Gulley's fear of prison and recommended retention. He described Gulley's claim that he was hearing voices and his suicide attempts as manipulative actions designed to insure retention at Matteawan. This witness also stated that Mitchell may have been on therapeutic drugs when the transfer decision was made and that he had no way of knowing whether the termination of medication would induce a relapse.

Dr. Atilla Cakir testified that he had been a staff psychiatrist at Matteawan for more than nine years and was licensed to practice medicine and psychiatry in Turkey (but

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not in New York). Dr. Cakir was well aware of Cruz's record at Matteawan and concurred in the decision to return him to prison. Dr. Cakir described the process of evaluating a patient for transfer as a deep personal and delicate judgment. He felt that it depended on whether or not the patient was psychotic. Dr. Cakir did not believe that personality disorders could be treated at Matteawan. The doctor testified that he sought a group evaluation of Dunleavy due to Dunleavy's ability to manipulate and sham, which led the doctor to seek the opinions of other psychiatrists before he recommended transfer.

Dr. Seymour Feldman testified that he was a staff psychiatrist at Matteawan and was licensed by New York in psychiatry. Dr. Feldman testified that he would not return a patient to prison without first lowering the dosages of medication required, which some other doctors had done. Dr. Feldman disagreed with the policy of keeping all aggressive patients in one ward and opined that neither a patient's enunciated wishes nor the fact that he had been in fights should

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\* While both Dr. Cakir (whose native language is Turkish) and Hector Cruz (who speaks Spanish) testified in English with some difficulty, Dr. Cakir denied having any problems treating Cruz.



be considered as part of the decision concerning continuation of treatment. Dr. Feldman also acknowledged that both Matteawan and the prison medical staffs are susceptible to "passing the buck" as a method of disposing of extraordinarily difficult cases.

All the psychiatrists denied that the ward altercations or the escape attempt had anything to do with the transfer decisions in plaintiffs' cases. There was also a general agreement that a serious psychosis could not be cured but, at best, the patient experiences a state of remission.\* The doctors differed significantly among themselves as to the possibility and propriety of Matteawan treating neurotic or personality disorders. Marked differences also appeared as to the causation and regularity of group evaluations and as to Dr. Sweeney's role and activity in transfer decisions. Finally, there appeared to be very little standards or objective guidance for the use of the staff personnel who must make transfer decisions.

The Matteawan doctors had a curiously ambivalent attitude toward the aggressively assaultive conduct manifested

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\* While plaintiffs argue that they have a right to remain at Matteawan until they have "recovered", this would appear to be impossible medically.

by most of the plaintiffs in this action. While acknowledging that in extreme instances (a "Jack the Ripper" for instance) such behavior might be symptomatic of psychosis, they seemed to feel that, by and large, it was merely a "personality disorder" (psychopathic personality) and neither treatable nor warranting hospitalization. (Indeed, it was suggested that much of it was caused by homosexual rivalries induced by the open ward confinement situation.)

Whether this tolerant attitude toward aggression is well founded is a medical question that may take years to resolve. But from a prison administration standpoint they are seemingly dealing with an insoluble dilemma. When a prison inmate continually assaults corrections officers and other prisoners, the prison officials have little difficulty in convincing the two certifying doctors that he is incompetent and in need of hospitalization. If he continues such behavior at Matteawan his status is reviewed and his acts are viewed as either a sign of his recovery, or at least not a psychotic symptom preventing his return to prison. He gets sent back to prison and the roundelay continues.



For the New York State prison inmate the right to treatment for mental illnesses incurred while in confinement is granted by Article 16 of the New York Correction Law. This Article details the situs of hospitalization to be Matteawan State Hospital and delineates the responsible officers and their powers and duties with respect to the mentally ill inmate. Of particular relevance to this case are §408 and §410 of the Correction Law. Section 408 provides an extensive array of procedural due process protections for an inmate faced with a transfer to Matteawan. Notice, hearings, representation and review are all rights which must be available to an inmate before the decision to confine him at Matteawan may be carried into execution. Section 410, on the other hand, provides that the treatment of patients of Matteawan shall be terminated when they have "recovered" from their illnesses. These two sections have been recognized by the New York courts as mandating that the Department of Corrections provide treatment for individuals confined at Matteawan. See Kesselbrenner v. Anonymous, 39 A.D. 2d 410, 334 N.Y.S. 2d 738 (2d Dept., 1972), rev'd on other grounds 33 N.Y. 2d 161, 350 N.Y.S. 2d 889 (1973). Furthermore,

the Supreme Court has recently noted that a state prison system's deliberate denial of medical treatment to the convict may constitute a violation of the Eighth Amendment bar to cruel and unusual punishment. Estelle v. Gamble, \_\_\_\_ U.S. \_\_\_\_, 45 U.S.L.W. 4023 (November 30, 1976).

In Meachum v. Fano, \_\_\_\_ U.S. \_\_\_\_, 44 U.S.L.W. 5053 (June 25, 1976), the Supreme Court held that the Due Process Clause of the Fourteenth Amendment did not entitle a duly convicted state prisoner to a prior hearing in the face of an impending transfer from one correctional facility to another, absent a state law or procedure granting the inmate such a right. The Court declared that not every change in circumstances visited upon a prison inmate must be accompanied by procedural due process notwithstanding the substantially unfavorable impact of the change. In Meachum the respondent inmates had brought suit in the District Court protesting their transfer to less favorable prison facilities based upon administrative determinations of prison officials. The lower courts, relying on Wolff v. McDonnell, 418 U.S. 539 (1974)



and earlier cases, held that the inmates had a right to a prior hearing before transfer. The Supreme Court, however, reversed explaining that the interest vindicated in Wolff was one based in state law and, therefore, the federal constitution (through the Federal courts) could then be invoked to insure the presence of minimum procedural safeguards. In holding for the state authorities in Meachum, the Court explained that the inmates in that case could not point to a specific state law or procedure conditioning transfers upon the occurrence of specific events and, therefore, the inmates could not claim that any due process rights had been violated by transferral without a hearing.

Counsel for defendants argues that Meachum limits Wolff and denies the mentally ill inmate any hearing right prior to termination of hospitalization by transfer from Matteawan to a correctional facility. However, the defendants' conclusion avoids the critical question established by Meachum -- does the state law or procedures give the plaintiffs a right for which Wolff will require due process protections?

Meachum followed upon a number of cases, beginning

with Mempa v. Rhay, 389 U.S. 128 (1967) and continuing through Morrissey v. Brewer, 408 U.S. 471 (1971) and Wolff v. McDonnell, supra, wherein the Supreme Court had enunciated the extent of the properly convicted person's continuing rights to due process of law. This line of cases represents the core of a growing body of law recognizing that the convicted criminal's forfeiture of his liberty by virtue a just conviction is not synonymous with total forfeiture of all civil and human rights. To the extent that Meachum limits these holdings this Court reads the decision to require the complaining state inmate to base his suit upon an underlying right recognized by the state law rather than upon federal standards and rights. The Supreme Court, by Meachum, limits the role of the federal courts in prison administration but not in the review of a state's provision of procedural due process to the rights extant in the state's own law. Where a state law protects an individual inmate from grievous loss, the Due Process Clause still requires that minimum due process protections are established so that the "state created right is not arbitrarily abrogated". Meachum v. Fano, supra at \_\_\_\_, 44 U.S.L.W. at



5057. It remains the function of the federal courts to insure that state promulgated protections for state conferred rights are minimally sufficient.

Plaintiffs have acknowledged that an action under Article 78 of the New York Civil Practice Law and Rules may be available for them. Cf. Solari v. Vincent, 46 A.D. 2d 453, 363 N.Y.S. 2d 332 (2d Dept., 1975)<sup>\*</sup>; but cf. Cummings v. Reagan, 45 A.D. 2d 415, 358 N.Y.S. 2d 556 (3d Dept., 1974)<sup>\*\*</sup>. Yet they contend, and the defendants have not contested, that an exhaustion of their state remedies is not a prerequisite to the 42 U.S.C. §1983 action. The Court agrees. Monroe v. Pape, 365 U.S. 167, 183 (1961). Accord, Carr v. Thompson, 384 F. Supp. 544 (W.D.N.Y. 1974). Furthermore, while the right of the mentally ill inmate to treatment is not explicitly set forth in Article 16 of the New York Correction Law, it is sufficiently explicated by the state case law to put to rest any question of the requirement of abstention by a district court under the doctrine enunciated in Harris County Commissioners Court v. Moore, 420 U.S. 77, 82-5 (1975) and McNeese

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\* Reversed as moot 38 N.Y. 2d 835, 382 N.Y.S. 2d 48 (1976).

\*\* Reversed as moot 36 N.Y. 2d 969, 373 N.Y.S. 2d 563 (1975).

v. Board of Education for Community School District 187,  
373 U.S. 668, 673 (1967).

New York's law, statutory and case, does recognize the right to treatment of the mentally ill inmate. The Appellate Division, Second Department, of the New York Supreme Court, in its opinion in Kesselbrenner v. Anonymous, supra, wrote:

We attach no significance to the omission of the word "treatment" in the mandate to the Department of Correction (Correction Law, §400, subd. 1) to maintain hospitals for the mentally ill "solely for the purpose of holding in custody and caring for such mentally ill persons" (Emphasis added.) In our opinion, the word "care" as used therein includes and imports the "treatment" of such persons.

Supra at 417, 334 N.Y.S. 2d at 745.

While the New York State Court of Appeals reversed the holding in Kesselbrenner, it too was able to state conclusively that Article 16 conferred a right to treatment upon the inmate found to be mentally ill. Kesselbrenner v. Anonymous, 33 N.Y. 2d 161, 167, 350 N.Y.S. 2d 889, 893 (1973). It must be concluded that the detailed mechanics established



by §408 of the New York Correction Law have little meaning in the absence of a right of treatment for those who, under its procedures, are determined to be mentally ill. Moreover, it is difficult to rationalize the detailed due process prior to admission with the total absence of discharge procedures and standards.

In this case there has been absolutely no showing of any procedural safeguards whatever antecedent to the terminations of treatment. Furthermore, the facts presented do not support the conclusion that the terminations of treatment in the plaintiffs' individual cases were even substantively in compliance with the standard enunciated in Section 410 of the Correction Law. While an evaluation by the full Matteawan psychiatric staff was given to Cruz before his transfer, the origin and propriety of Cruz's evaluation is suspect. The timing and context of the several pre-transfer evaluations done on the other plaintiffs make it very likely that the results -- a decision to transfer -- were foregone conclusions in light of the plaintiffs' prior problems with correctional officers.

Furthermore, the requirement that treating physicians and psychologists be charged with the responsibility of determining which of their patients are transferred and which remain in the hospital is a questionable practice. Such a system leads to abuses by both the treating physician and the patient; either may seek to disguise a recovery or certify one that does not exist for any one of a number of ulterior purposes. The staff physician is under a continuing pressure to "succeed" in his treatment efforts and also must face the complaints of correctional officers about aggressive patients. On the other hand, as the evidence revealed, the doctor may be inclined to tolerate the continued treatment of a recovered patient if that person serves to assist the overall mission of the hospital or has a demonstrated inability to cope with the prison environment. The patient, in turn, may seek to disguise his symptoms and resist treatment if he feels that his physician may one day have to be the cause of a transfer back to prison. Such a specter of an adversarial relationship is no less harmful in the context of a hospital than it is in other similar correctional circumstances. Cf. Morrissey v. Brewer, 408 U.S. at 485-6.



The facts presented in this case also demonstrate that different physicians may have radically different views of both a given inmate's illness and the need for and possibility of treatment of any given mental illness. The evidence further suggests that, in any given transfer decision, wholly extraneous influences may be dispositive factors. Society in general, and New York in particular, has long ago ceased the exploitation and arbitrary abandonment of its disabled citizens. It is no less wrongful for society to arbitrarily dispose of the sick of mind than the lame of body. Cf. United States ex rel. Schuster v. Herold, 410 F.2d 1071 (2d Cir. 1969). It is no less wrongful to arbitrarily begin and end a course of treatment for one convicted of a crime than for one who has not been so convicted. Cf. Estelle v. Gamble, supra. Treatment is mandated under Section 408 and the New York case law and while Matteawan authorities certainly should be permitted to transfer inmates who are recovered, the manner in which such transfers have been handled in plaintiffs' cases sufficiently demonstrates that the state right to treatment is being arbitrarily abrogated and that the safeguards provided

are not minimally satisfactory under the Due Process Clause of the Fourteenth Amendment.

The State also presented Dr. Jack Wright, Assistant Commissioner of Mental Hygiene, who testified that the methods of treatment at Matteawan had been changed so that team evaluations were used instead of rotating assignments and that the use of a separate evaluation ward was being discontinued. Dr. Wright also described several further reorganizational steps that are planned for Matteawan's population. The planned changes include the operation of six mental health facilities at or near six major correctional facilities and the transfer of responsibility for mental health programs for prisoners to the Department of Mental Health. While the changes described are laudatory and may relieve many treatment shortcomings, they are as yet merely plans for the future and not relief for the plaintiffs' current complaints.\*

Plaintiffs, based on existing cases prior to the Supreme Court's decision last summer in Meachum v. Fano, supra, pray for an extensive array of procedural safeguards. However, both parties paid scant attention to the question of what

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\* We are advised that the location and positions of many of the plaintiffs have changed. Consequently, the matter of individual relief is not being considered at this time.

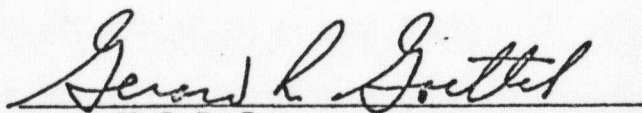


procedural safeguards are appropriate and feasible in the transfer decisions. The Court is reluctant, in such a situation, to limit the administrative options of the Department of Corrections without first allowing the defendants the opportunity to suggest improvements in the procedures presently employed. The preferred course, and the one selected, is to allow the defendants, or their successors in office, the opportunity to construct an administrative process that is in keeping with the fundamentals of the Due Process Clause. It is expected that the procedures established will include, at a minimum: written notification to the inmate of the transfer decision and its factual basis; identification of the decision makers; ending the use of the treatment staff as the sole decision makers; and some type of professional review which will be free from administrative pressures.

Within sixty days, the defendants shall submit to this Court written guidelines providing all feasible and appropriate procedural safeguards as mandated by the Due Process Clause and this decision.

SO ORDERED:

Dated: New York, N.Y.,  
December 17, 1976.

  
U.S.D.J.

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK )

Arlene Silverman being duly sworn, deposes and says that ~~he~~ <sup>she</sup> is ~~employed~~ in the office of the Attorney General of the State of New York, attorney for ~~appellant~~ herein. On the 9<sup>th</sup> day of February, 1977, she served the annexed upon the following named person :

Jane Bloom  
50 Market St  
Poughkeepsie, NY

Attorney in the within entitled appeal <sup>giving to air mail room</sup> by <sup>depositing</sup> ~~deposited~~ a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney at the address within the State designated by her for that purpose.

Arlene R Silverman

Sworn to before me this  
9<sup>th</sup> day of Feb

, 1977

Emanuel M Kay  
Assistant Attorney General  
of the State of New York